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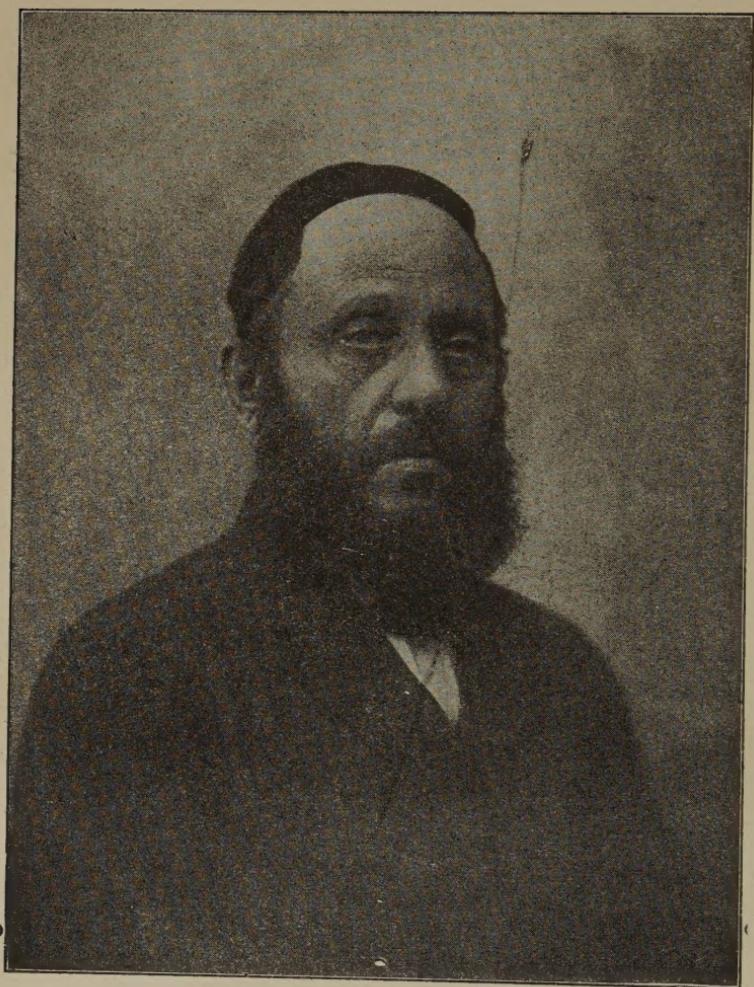
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חישון המשפט

# JEWISH CODE OF JURISPRUDENCE

TALMUDICAL LAW DECISIONS

CIVIL, CRIMINAL AND SOCIAL.

By RABBI J. L. KADUSHIN

TRANSLATOR OF THE JEWISH CODE

PARTS I, II, III AND IV.

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אורחים ותומכים

SECOND EDITION

PART I

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## PREFACE.

Blessed be the name of the Lord who kept me in life and health, to be able to reprint for you, dear, great, educated and learned men, my translation of the Talmudical Law Decisions, which is named "Jewish Code of Jurisprudence," Parts I and II, and which has now been revised with improvements, and contains more law than the previous edition on the subjects: "Qualification of Judges," "Witnesses," "Loans," "Plaintiff and Defendant," "Court Oaths," "Mortgages," "Agency," "Surety," "Honoring Parents, Teachers and Learned Men," "Charity," "Criminal Actions," which were collected by the great learned Rabbi, Joseph Karro, about one thousand years ago from the Talmud, Alfassi Goennim and Maimonides under the name Choshen Mishpot for remembrance of one of the garments worn by the High Priest and Chief of the Judges Aaron, and this name Choshen Mishpot in English means "Breastplate of Judgment, which was worn on his breast" (Exodus 28-15, see Code I, Chap. 8).

Even though the law was created so long ago it is as effective now, because this law is the source of all the present laws which are based upon it; for example, the law of Lawrence vs. Fox, 20 N. Y., 268, is found in Jewish Code, Part II, Chapter 126, and

the subject of “Fraudulent Conveyances is found in Jewish Code, Part IV, page 503, etc.

I am sure if you will study this sacred edition you will find great jewels of learning and any doubt you may have on any point of law, you will find therein the right decision.

This law is applicable to all classes and all generations, and for all times and all places. You, judges, lawyers and educated men, I am sure you will honor the source of the law by buying this book and having it in your possession, to study it and this will bring you greater knowledge, and I pray to the Lord,

1. To guard me from mistakes and misfortunes.
2. Let the people stop the destruction of the articles which the Lord created for the welfare of mankind.
3. Let us not be like the wild beasts and big fishes where the strong swallow the weak.
4. Shall the time come that the world be full with the light of learning and that justice shall be given to the just.
5. Let us learn the principal “Live and Let Live” (Leviticus 25-36).

6. Shall we find good grace in the eyes of the Lord and mankind, and our prayers shall be heard.

7. Therefore, I find it my duty to spread this edition of the world because when the learning will be multiplied then the blessing of peace will come, and even it is published in the English language it is the same command to study as in Hebrew (Seito 33).

8. I wish that the blessing of the Prophet Isaiah shall come soon, namely.

9. "The suckling child shall play on the hole of the asp and the weaned child shall put his hand on the cockatrice den."

10. "They shall not hurt nor destroy in all my holy mountain; and nation shall not lift up sword against nation, for the earth shall be full of the knowledge of the Lord, as the waters cover the sea (Chap. 11).

And I voice expression of gratitude and appreciation to those who have encouraged and assisted me in my work.

THE EDITOR.

## THIS HOLY LAW BOOK BASED UPON THE FOLLOWING SECTIONS:

Judges and officers shalt thou appoint unto thyself in all the gates which the Lord the God giveth thee. Throughout the tribes and thou shall judge the people with a just judgment.

Thou shalt not wrest judgment, thou shalt not respect persons and thou shalt not take a bribe for the bribe blindeth the eyes of the wise and prevent the words of the righteous.

Justice, only justice, shalt thou pursue in order that thou mayest live long (Deuteronomy, Chap. 16).

Rabbi Simon, the son of Gamliel, said: By the three things is the world preserved, by Truth, by Judgment and by Peace (Ovous 1-18).

By the first he meant to impress the hearer, because the mouth is the holy temple of the body and it must be clean from speaking evil lies and must fulfill promises which he promised with his mouth, because the mouth is like a telephone which can speak on a long distance through same when it is in good order; but when it is rusty, it cannot be used, the same is with the mouth when it is clean, from speaking evil then everything. What he requested by the Lord can be heard and fulfilled, but when he is rusted, by speaking evil, lies, or promises and does not fulfill, no use can be had from it, and the world

cannot exist with such men; therefore, the educated says that the false have no feet. By the second, he means that justice brings peace to this world, the holy Talmud relates (Schabos 10). If a judge decides a right decision to the parties he is a partner to the Lord in the creation of the world, because the Lord created the world, and he is satisfied that the world shall exist, and the robber that robs, he destroys the world against the will of the Lord.

With his right decision the judge took away the robbed article and returned it to the first owner and fulfilled the will of the Lord; therefore, he is a partner to the creation of the world, and when the robbery will stop, then the blessing of the peace will come. We should not covet others' possessions, because what we ourselves possess is not ours, and if you want to be saved from doing injustice, learn this holy law book, which teaches what is right and what is wrong. If we follow the Holy Law we are saved from iniquity and the world will be full of peace.—Amen.

While Alexander, the King of Macedon, was visiting another king, a trial was held before the other king in which one man claimed that he purchased a field from another and that afterwards he found there was buried in the field a quantity of hidden treasure. He claimed that as he purchased only the field that the treasure did not belong to him,

but to the vendor. That vendor, however, claimed that since he sold the field this also included the treasure and, therefore, the treasure belonged to the vendee.

The king asked the vendor if he had children and he answered that he had a son. The king then asked the vendee if he had any children and he answered that he had a daughter. The king then rendered his decision which was that the children of both parties should marry and the treasure be given to them as a dowry.

Turning to Alexander the king asked, "How would you decide this case if it came before you?" King Alexander responded that he would order both parties slain and award the treasure to the government.

The other king in indignation asked of King Alexander, "Does the rain fall in your country?" to which King Alexander answered, "Yes." Then he asked the King, "Does the sun shine there?" and again the King Alexander answered, "Yes." Then again the king asked of Alexander, "Are there small cattle in your country?" and again King Alexander answered, "Yes."

Then spoke the king, "The rain falls and the sun shines out of regard for the small cattle and not because of your worthiness."

MIDROS RABO NOAH.

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# PART I.

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## QUALIFICATIONS OF JUDGES.

הלוות דיןין

### CHAPTER I.

#### THE LAW OF APPOINTING JUDGES AND WHICH CASES THEY MAY DECIDE.

1. The judges are permitted to try cases affecting questions which arise in the ordinary course of business and which often happen, also cases involving money damages, *e. g.*, loans, collections, judgments, admission, gifts, cases involving the marriage contract, inheritance and all cases in which money damages is sought.

2. The judges have no jurisdiction over matters which are unusual and rarely happen, even though there be a question of money damages or ordinary matters which involve no damages though they are of usual occurrence (Giten 88, B. K. 84).

NOTE: The rule is based on the fact that jurisdiction was derived from the wise men of Palestine, who were competent to try any issues of every nature. Now that Palestine has been lost no such persons

exist who are deemed capable to be vested with such jurisdiction or from whom advice can be obtained so that the jurisdiction becomes limited to matters of ordinary occurrence, *e. g.*, the wise men of Palestine were competent to decide upon capital punishment, since they possessed the necessary learning, whereas after the Code of Palestine there were none deemed possessed of such learning as to warrant such power (L. c.).

## CHAPTER II.

### POWER OF THE JUDGES AND CITY BOARD AND GOVERNMENT.

1. In cases where acts are committed in violation of the rights of the people, in general injustice to them, insurrection, riot, national danger, or such other acts which ordinarily the judges cannot pass upon, which the necessity demands, they, including the Government and City Board, have jurisdiction even to the extent of sentencing to death, directing the plunder and pillage of the unjust and wicked, or mete out any other punishment or judgment which they may find necessary for the occasion, in order to restore order, respect and justice. The judges must possess the highest amount of learning and be recognized by the community (Sanhadrin 46).

2. If a person has committed such a sin, for

which the punishment was, in olden times, to be smitten 40 times, by enactment of the Goannim he may pay 40 dollars for charity in lieu of the punishment, whereupon he is released (Romo).

### CHAPTER III.

1. The numerous number of justices are three who must be appointed by the community. They can summon parties to court and enforce their mandates by punishment for contempt (Sanhadrin 3).

2. Parties are permitted to resort to arbitrate by each choosing one judge and the two choosing a third. In that event the court cannot compel attendance or obedience to its mandates (see Chapter XXII).

3. A judgment passed by less than three judges is void, even though their conclusion may be correct, except, however, if both parties consent to accept the decision of less than three, or if the judge is an expert and accepted as competent (L. c.).

4. The admission of confession of a party before less than three judges is not valid. He may change his testimony later and he cannot be punished for perjury for false testimony given before them, and he cannot lose his reputation afterwards if it is established by witnesses that he did testify falsely (Tur.).

5. Although one judge may be competent to try

it is always preferable that there should be more; even if the tribunal is composed of three judges, it is still desired that they shall have the assistance of others. The greater number the judges, the more accurate their decision (Sanhadrin 7).

## CHAPTER IV.

### SELF DEFENSE.

1. Each man is permitted to act as judge by himself, *e. g.*, if a man sees his stolen property in the possession of another he may take it away by force or by smite if he is not able to take it away otherwise. Even if the article could not be lost, if he will wait until he is brought to a Court of Justice, it is assumed that the plaintiff must prove his innocence (B. K. 27).

2. One may attach for his debt an article entrusted to him as bailee or if he found the article from the borrower in another's possession as pledge for his debt, but the lender may not take such article by force from the house of the borrower (see Chapter XCIV).

## CHAPTER V.

### WHICH DAY TRIALS MAY BE HELD.

1. No trial may be held on the Sabbath or the holiday (Bicho 36).

2. No trial may be held at night, but a trial may be continued at night if it has been begun during the day (Sanhadrin 32).

## CHAPTER VI.

### THE AMOUNT TO START A TRIAL.

1. Not less than one pruto (one cent U. S.) can trial be started, and if he started at one pruto (one cent U. S.) and afterwards the plaintiff claims less than one pruto (one cent U. S.) he must be tried (B. M. 55).

## CHAPTER VII.

### WHO IS POSSIBLE TO BE A JUDGE.

1. One who is totally blind in both eyes cannot be a judge (Sanhadrin 34).

2. Some opinions hold that the judge must be at least eighteen years of age. And must have the sign under the arms. Another opinion holds that from thirteen years he is able to be a judge, even if he has not the signs under the arms (Schabos 56).

3. No woman can be a judge (B. K. 15; Iawomath 45).

4. One who is in the state of intoxication may not be a judge (Sanhadrin 42).

5. The witness who testifies cannot be a judge (Kesuboth 21).

6. If three judges when assembled together for any purpose during the day time witness an act or transaction and subsequently the matter is brought before them for trial, no witnesses need be produced before them and they may decide the case upon their own knowledge and from what they themselves saw. (Note: "Seeing is better than hearing." That is, if the judges are able to decide a case on what others have heard or seen it follows that they are certainly able to decide a case on what they themselves have seen and heard.) (L. c.)

7. If, however, they witnessed the act or transaction in the night time, they cannot make a decision without the testimony of witnesses; for during the night time they cannot try cases and they are permitted to use their own knowledge only when it was obtained at a time when they could legally decide a case, and that is during the day (L. c.).

8. There is a conflict of opinion as to whether or not a person who has been ordered and subpoenaed to testify as a witness, but who has not yet given his testimony, is qualified to be a judge to try the case through other testimony (B. B. 114).

9. If a renowned person is subpoenaed to appear before a justice who is inferior in education and

position to the person subpoenaed, does not have to obey the subpoena; in such a case a commission composed of men of equal high intellect must be appointed to determine whether or not he should appear (Kidushin 70, Tur).

10. One who is either related to, friendly with or prejudiced against any of the parties concerned may not be a judge in the case. A judge must be impartial to both sides (Kesuboth 105).

If two judges hate each other they cannot both be judges in one case, because their enmity will prevent them from agreeing on a just decision (Sanhadrin 29).

11. A person who is ineligible to be a witness by reason of his relationship or injustice is not eligible to be a judge (Nido 29).

12. Judges cannot be related to each other or to any of the witnesses (Ran).

13. If one judge knows that the other is a person who commits wrongs, he may refuse to act as associate judge with him (Schvuas 30).

14. The appointed judges should possess these seven qualifications: wisdom, modesty, uprightness, contempt for money, love of truth, popularity and a good reputation (Tur and Maimenades).

15. No person may be a judge in a trial in which

he is personally interested, if though the benefit be of a public nature, *e. g.*, if the Torah is stolen (and it is the only one in the city) the judge cannot sit at the trial of the thief, but a judge must be obtained from another city; or in a trial involving taxes, a judge from another community must be obtained.

16. If it is an enactment of the City Board that even such trials may be held by the appointed local judges, then the judges are permitted to try such cases.

## CHAPTER VIII.

### PERSONS WHO ARE UNABLE AND IGNORANT SHALL NOT BE APPOINTED AS JUDGES.

1. He who appoints an ignorant person as judge, even though he possesses other good qualifications or traits, violates a command of the Torah (Maimenades).

2. A person unable and ignorant who secured his appointment as a judge by bribery, is entitled to no honor or respect and it is even permissible to slander him (Jaruschalmi Bikurim).

3. Judges should maintain themselves in a dignified manner; they must be robed in appropriate garments. They must know for whom and in whose stead they judge. They must know that if they de-

liberately render a wrong decision in a money case, they are as despicable as murderers. If, however, they render judgment aright, they are as partners to the Lord in creating the world, because they bring peace between God and humanity (Sanhadrin 7).

4. A judge should not be haughty or lowly, but modest. He must not do any manual labor, eat or drink in the presence of strange people (Kadushin 70).

5. Every judge must have the services of a private secretary or officer (Mamenades).

6. A court officer should not be insulted. The judge may punish by flagellation any person who insults or slanders a court officer, and such punishment may be given solely on the word of the officer, whose testimony is equivalent to that of two witnesses (Kidushin 12).

7. The officer is permitted to defend himself against the offender by smiting him or taking his money and he is not liable for such acts (Ramo).

## CHAPTER IX.

### JUDGES SHALL NOT ACCEPT BRIBE.

1. A judge must be extremely careful not to accept a bribe, even to justify the just. If a judge

has accepted a loan, he must return it on request. Both he who receives and he who gives a bribe violate a command. A judge cannot even accept a flattering remark. If a judge has borrowed anything from a party in the case, and he is not able himself to loan anything to that party, he may not be the judge at that trial (*Kesuboth* 105).

2. If a claimant in anticipation of bringing a suit before a judge gives him a gift (without his knowledge of the purpose), the judge upon discovery has the right to preside at that trial over defendant's objection, but it is permitted and it is a custom to have the community raise a fund to provide an income for the judges, which fund is not considered graft, because it is a Command of the Israelites to support the learned judges and sextons. This fund must be collected either before or after the year (*Tur*).

3. If a judge requests of the parties concerned that they pay high sums of money to his secretary or sextons or officer, that is considered bribery (*Schaboth* 56).

4. If it is discovered that a judge accepts payment to render a decision, all of his prior decisions are void. If there is a doubt it is still void, except if it can be proved that in such former decisions he accepted no payment, his decision can be valid.

5. If a judge who has a regular occupation, but

who does not ordinarily confine himself to the duties of a judge, is called upon to decide a case and that causing him to afford a loss in the occupation, it is permissible to compensate him for the time lost, and he must require from both parties to make good his loss. If, however, the judge is not certain that he will have any loss but it is only conjectural, he cannot take any payment for his time (Kesuboth 105).

6. The judge is forbidden to consult with an ignorant scholar because he may be misled from a right decision (Schoboth 30).

7. If a scholar sits with a judge by trial who is presiding in the case in which one party is wealthy and the other poor, and the judge is inclined to decide in favor of the wealthy party, and the scholar is of the opinion that the decision should be in favor of the poor man, then the scholar must call the judge's attention to it, so that the judge may give the matter consideration. If he keeps silent, he violates a law which provides that "one must keep a distance from falsehood" (Exodus, Chap. 23).

## CHAPTER X.

### JUDGES MUST DELIBERATE AND CONSULT WITH LEARNED MEN BEFORE RENDERING A DECISION.

1. A judge must deliberate slowly before rendering his decision. The subject must be clear to him

(as clear as the sun). If he renders a decision without thought and deliberation he is as a fool and one who is conceited (Obetha; Sanhadrin 35).

2. If a case is presented to a judge, involving facts similar to a case decided by him before, he must still deliberate and consult with some other of higher education; if he fails to do so he is considered vain and unwise (Yavomath 109).

3. The judge must give the same degree of attention and deliberation to a case involving one cent as to one involving \$10,000 (Sanhadrin 5).

## CHAPTER XI.

### WHO CAN SUMMON TO COURT.

1. The three appointed judges can send their messenger to summon a person to court on a certain date. If the party summoned fails to appear on that date, he may be summoned a second time. If he fails again, he may be summoned a third time, and he is waited for a full day. Upon his failure to appear that day, he may on the day following be excommunicated (B. K. 113).

2. The above rule applies only to a traveling man. If, however, a man is steadily in the city he is summoned only one time and upon his failure to appear during that entire day he may on the follow-

ing day be excommunicated for contempt of court (L. c.).

3. The court messenger is believed like two witnesses that a party insulted or slandered him and the court is sufficient to cause excommunication for them (B. K. 112).

4. The summons must be delivered personally; if it was delivered to a neighbor it is not valid.

## CHAPTER XII.

### LAW OF ARBITRATION.

#### דיני פשרה

1. The appointed judges must try and decide any and all cases which are brought before them without favor of those of high influence (Mamanodes).

2. It is a command that before commencing a trial the judges shall ask of the parties whether or not they prefer arbitration. The judge may even use his influence to have arbitration. If the parties agree to arbitrate then the court must do so with the same sincerity and justice as in deciding the case by law (Sanhadrin 7).

3. Arbitration can be had only before the decision of law is rendered. After a decision is rendered there can be no arbitration by the judge. This does

not exclude others from effecting arbitration between the parties even after the decision (L. c.)

4. If the decision makes the defendant liable to take an oath, then the judge may settle the case by arbitration, in order to avoid the consequences of an oath.

5. It is disputed whether or not a judge can compel obedience to a sympathy judgment, *e. g.*, if one hires a laborer to remove a barrel of wine, for which labor he receives \$3 per day; if in the course of his work he breaks a barrel of the value of \$10 for which he is liable to pay, it is disputed whether or not the judge may out of sympathy, upon the laborer's plea of poverty and hunger, decide that the employer shall pay the laborer his wages, even though at law the employer is not liable for the same (B. M. 83; Roch).

6. The judge is permitted to settle by arbitration any case involving the rights of orphans; this is to avoid quarrels (B. K. 21).

7. The judge may make a decree declaring such arbitration incontestible, even after the orphans have attained the age of majority.

8. In a case involving title to property not in the possession of either party, and in which it cannot be proven to whom the property belongs, the judge by the application of rules of law and arbitration must make a settlement and disposition of the case according to his understanding (B. M. 42).

9. If one has in his possession money belonging to another he is forbidden to resort to trickery and device to force the other party into a settlement of arbitration by which he (the other party) may receive a small sum.

10. If the parties decide to arbitrate they must make a form of agreement or deposit a note for the amount in dispute. The arbitration is then binding and neither party can withdraw from or avoid it (Sanhadrin 7).

11. In a case in which one claims a certain sum from another and the arbitration decides that the claim must be released without the payment of any part thereof, a form of agreement to that effect is not necessary (B. M. 112).

12. If A deposits with B as bailee certain property, and by reason of B's denial and the lack of proof the arbitrators decide adversely to A, such arbitration can be void if it is subsequently discovered by witnesses or new evidence that B lied.

13. If A was liable to B an oath, and upon a request to be excused by B from taking such oath, B cannot thereafter demand an oath from A (Beth Joseph).

14. It is an opinion that arbitration must be by a unanimous vote of all the arbitrators (Mordchi 72).

### CHAPTER XIII.

1. In a community where there are no regular appointed judges each party may select a judge, and upon their failure to agree, the selected judges may choose a third judge, whose decision is binding. It is permissible for each party to select two or more equal number of judges, who may in turn choose a deciding judge (*Sanhadrin* 23).

2. Each party must choose a judge of good character and reputation and not related, and each party may object to the other's choice if he does not possess the qualifications. The judges need not be necessarily equal in education.

3. As soon as the judges are chosen, the chosen must be written or a form of agreement must be made after such writing or agreement they cannot retract. They may, however, retract at any time before such writing or form of agreement. The fees for this writing must be borne equally by both parties (*B. M.* 20).

4. The issues between the parties must be tried orally, if one desires to submit his claim in writing the other may object, because if the parties try their case orally the judge may better understand the truth by the demeanor of the parties and their manner of testifying. After they have testified their

testimony must be reduced to writing at equal expense of both parties.

5. If the parties empowered ten judges to arbitrate or decide their case by law and by a majority verdict, and should one of the judges fail to give an opinion, even the other nine unanimously agree, then the decision of the nine is void (Rachbs).

## CHAPTER XIV.

### IF THE PARTIES LIVE IN DIFFERENT CITIES.

1. There was a High Court in Palestine composed of the most learned in the world. If the plaintiff wants his case to be tried in the local court and the defendant wants it to be tried in the higher court, the case must be tried in the local court; but the defendant has the right to demand of the local judge that he should state in writing the reasons for his decision, so that he may have it reviewed by the High Court of Palestine (Sanhadrin 31).

2. If the plaintiff wants to try in higher court, and the defendant wants to try it before the locality judge, the case must be tried in the highest court.

3. If the plaintiff and defendant reside in two different cities, the case must be tried in the city where the defendant resides, even though the judges

of plaintiff's city are more learned than those of defendant's.

4. If the local judges are in doubt upon a question of law they may request instructions from the High Court of Palestine and both parties must pay the expenses incidental thereto.

5. If the defendant has property in plaintiff's city which can be attached by provisions of law in Chapter LXXIII pertaining to attachment, then the case can be tried in the plaintiff's city. The plaintiff must pay the expenses of summoning the defendant to the court in his (plaintiff's) city (Ramo).

6. If, however, the plaintiff is a father or teacher of defendant, out of respect to them, the defendant must come to the father's or teacher's city (Command 5).

7. If the defendant comes to court voluntarily or in lawful obedience to the mandates of the court he need not pay court expenses. If, however, he had to be forced by contempt to appear or his conduct was contumacious, he must pay plaintiff's court expenses.

8. If the plaintiff has expended money for counsel fee by reason of defendant's failure to answer plaintiff's demands, some opinion holds that he must pay such counsel fees and expenses incurred.

9. This case applies only when the defendant is found liable.

## CHAPTER XV.

## PREFERENCE OF CASES.

1. He who comes to court first must receive attention first, with the exception that a party, plaintiff or defendant, who is learned has preference over one who is ignorant.

2. An orphan (if he appears personally without a guardian) has preference over a widow (if appearing personally), a widow over a learned man. A woman's case has preference over a man's because it is slander to keep a woman waiting in court.

3. The above rules apply only when the parties arrive in court simultaneously, otherwise the attention must be given in the order of arrival, except that a case of a learned man may be commenced immediately, even to the extent of stopping a case already on trial.

4. If a judge suspects that a claim is false or that the plaintiff stubborned a witness to commit perjury, but cannot ascertain this falsehood, he cannot render a decision, but he may issue an order that the case shall not be tried by any judge in the world (Rochs).

5. The rule above applies to plaintiff's case. If, however, the judge suspects that the defendant's defense is false or has been interposed for delay, he

may, according to his understanding, render a decision in favor of the plaintiff, or he is permitted to take the testimony of a prominent man, who the court knows will not lie, and decide the case on such testimony.

6. If the judge understands the case to be that the defendant by perjury and falsehood is trying to rob and cheat the plaintiff, he may issue a decree boycotting the defendant from business, and if a woman, forbidding anyone to marry her.

## CHAPTER XVI.

### GRANTING TIME TO PRODUCE WITNESSES.

1. If one of the parties asks for time to produce his witnesses the court may ordinarily give him 30 days' extension. If a special reason for a longer or shorter time is presented the court may grant such adjournments accordingly. If the party fails to produce his witnesses within 30 days, the court may render a decision, except, however, if the witnesses are produced after the expiration of the 30 days the case may be reopened and a new decision given according to the evidence or the witnesses.

2. When the defendant is found liable to take an oath, and the plaintiff asks for a long adjournment to produce his witnesses, such adjournment can be

granted if the defendant is not prejudiced thereby. If, however, the defendant's credit and reputation are endangered thereby, such adjournment cannot be granted for a longer period than 30 days.

3. When the defendant in good faith asks for an adjournment to produce evidence, and witnesses to disprove plaintiff's claim, it may be granted. If, however, the judges understand that such adjournment is asked for delay, they may refuse an adjournment. When defendant promised by a written agreement to pay plaintiff's claim on demand without delay, then an adjournment cannot be granted; the defendant must perform his agreement (Ritbo).

4. When a defendant enters a plea that there is evidence to sustain his contention, but he does not know where to find it, the court may issue a command directing any person who possesses such proof to appear and testify. This command applies even to the plaintiff himself (Tur).

5. A claims that B, a third party, has a document, in which there is contained evidence material to his cause. If B denies that such evidence is contained therein, he cannot be compelled to produce it. If he admits it or he is in doubt, he can be compelled to produce same and the court will take a copy of the evidence.

6. If B says that he has nothing in his document

about evidence material to his cause he cannot be forced to show his document to anybody.

7. If A claims positively it is evidence in his document and B denies it, then B must receive an oath (Hises; B. B. 168).

8. If A produce a note for collection on B and the borrower demand a copy of it on the ground that it may be false, his request should be granted (Tur).

## CHAPTER XVII.

### LITIGANTS MUST BE TREATED EQUALLY.

1. With justice you try your comrade. The judge must treat the two parties in a case with strict impartiality, not curtailing one man's plea without restricting the other's also, nor allowing one man to speak longer than the other. The judges should not assume a milder or sterner mien toward one of the parties than toward the other; they should not permit one party to sit and the other to stand—they should bid both parties either to sit or remain standing. Parties to a law suit may be sitting only when they give their pleas or at any other time that the trial is going on, except when the verdict is pronounced they must stand. Judges must always be seated. Witnesses may not be seated when they testify (Schvuath 30).

2. If several men bring suit against one individual the court may, upon the defendant's demand, permit the friends of the defendant to sit beside him in court. Since the plaintiffs are several and the defendant only one, the latter may become confused in his evidence. If the several claimants select a spokesman to act as plaintiff the defendant is not allowed to have his friends in the court (L. c. 31).

3. A judge must not hear the plea of one party in the absence of the other, for he may become influenced. This applies only where a judge has been appointed to try the case. A judge may try a case although he has heard the plea of one party in the absence of the other before he has been appointed to a case if he has not given his opinion and both parties are satisfied with him (Sanhadrin 7).

4. A judge is forbidden to hear the pleas through an interpreter when the judge understands and can speak the language. If, however, he cannot speak but understands the language, then an interpreter is permitted (Machos 6).

5. After hearing the testimony of the parties the judges must repeat in their own language, with their own mouths, the pleas of each one (L. c.)

6. A judge who has pronounced sentence and later believes he has been mistaken, should not sacrifice his honest belief for consistency. It is his duty to

recall the parties involved and pronounce justice anew to them. It is better to be disgraced in this world than in the other world. And yet there is no disgrace in this, for many great men have changed their minds (Schvuas 31).

7. Judges must remain silent when listening to the pleas of both parties. They are not allowed to assist a litigant when they see that a litigant has in his plea a good chance to win, but is unable to express himself; should not take the part of either prosecutors or defendants in the case. If they do not comprehend the pleas of either party, they may ask for an explanation.

8. If the plaintiff brings one witness, the judges may not state that one witness is insufficient to prove a case of payment, because the defendant may become afraid of the testimony and be led to admit his debt. The judges should merely ask the defendant to answer on the witness' testimony. If the defendant denies the truth of the testimony, or refuses to answer or says that one witness only can make him liable to take an oath, the judge must then compel him to take an oath (Jarushalmi).

9. If the judges feel that a party to a law suit has a good plea, but is unable to deliver it forcibly, or has become confused because of either his stupidity or his anger, it is their duty to help him, for the Torah

requests them "to open the mouth of the dumb." However, they should be careful to preserve their impartiality. It is the duty of judges to plead for orphans who are minors and act as their parents.

10. The judges must not favor a poor man in a law case on account of his poverty; he shall not say the plaintiff is a poor man and the defendant is rich, and he is therefore bound to support him, and for that reason I will decide that the rich man is liable, and the poor will be supported with honor. Or if a rich, educated man appears against a poor and ignorant man, the judge shall not honor the educated man or shake hands with him, because he is liable to confuse the testimony of the other party. The judge must decide according to justice and the truth for both parties. Neither should they believe a pious man more readily than a wicked man. Both must be treated equally and must be regarded as honest after the decision has been rendered and accepted (Schvath 30).

11. Judges should pronounce sentence as soon as they have come to a conclusion; for delay in rendering a decision may cause undue pain and anxiety to a party involved. (The Torah commands: "Thou shalt not commit any wickedness in a trial.) (Sanhadrin 35).

12. If one of the parties threatens the other in the presence of the judges that he will be found liable in

this suit for the highest amount and the judge knows that the law is not so, the judges must assert the falsity of the statement (Kesuboth 69).

13. A claims a certain amount from B and the judge finds according to law that A is entitled to more, he must render a judgment only for the amount of A's claim (B. B. 5).

## CHAPTER XVIII.

### THE DECISION CAN BE RENDERED BY MAJORITY.

1. If one of the parties bring witnesses to prove his innocence they must be examined by cross examination and afterward the judge can command the court room be vacated and they start the deliberation over the facts of the trial.

NOTE: If there is another room, the judges must adjourn there for deliberation.

The opinion of the younger judges should be heard first, that they may not be influenced by the opinion of the oldest judges. If all the judges decide one way, a verdict may be rendered; and if there is an argument—for instance, two say the defendant is liable and one says he is not liable, or if two say he is not liable and one says he is liable, the verdict is reached by the decision of the

majority. If, however, one says he is not liable and one says he is liable, and the third refuses to give his opinion, or two say not liable or liable and one refuses to give his opinion, two more judges must be added, making a total of five judges; if three say not liable and two say liable, he remains not liable, and if three say liable and two say not liable, he remains liable. If two say not liable and two say liable, and one refuses to give his opinion, two more judges must be added. If the two judges decide on one side, the decision can be rendered, and if they divided each one in another side, then other two judges must be added, and can be continued until seventy-one. If when it is reached thirty-five say not liable and thirty-five liable, and one refuses to give his opinion, because he says he does not know, then the judges must argue with him until he decides with one side. If he does not withdraw his doubt, the money must remain in the possession where it is at present (Sanhadrin 30).

2. When there were five judges and four gave their opinion for not liable or liable and one refused to give his opinion, or three stated not liable, one stated liable, and one refused to give his opinion, the verdict can be decided by majority (L. c.).

3. The judges that said liable or not liable must explain a sensible reason, but the judge that refused

to give his opinion because he said he did not know, must not give his opinion.

4. If three judges started a trial and one resigned from same, the other two judges are forbidden to decide without the other one.

5. The court can render the verdict in a civil suit even in the absence of the defendant.

## CHAPTER XIX.

### THE FORM OF THE JUDGMENT.

1. After deciding the argument the judges called the parties in to the court room and the head of the judges said you, so and so, are found not liable, and you, so and so, are found liable.

It is forbidden for the judges when they left the court to express before the public who was in favor of liable and who was in favor of not liable. The judge who violates this law violates a command of evil.

2. If one of the parties like to have the decision in writing, it must be written in this form: So and so has a trial with so and so before the judges so and so, and according to their decision, so and so is found not liable and so and so is found liable. The defendant that is found liable can ask 30 days' time in which to be able to pay the judgment.

## CHAPTER XX.

### UNTIL WHEN CAN THE PARTIES BRING EVIDENCE TO REVERSE THE DECISION.

1. If the defendant is found liable and afterward when he left the court he found witnesses or evidence in his favor, he can demand a new trial. Even if he paid the judgment already, and even if the judge told him at the first trial bring all the witnesses and evidence that you are able within 30 days, and the defendant brought them after 30 days, the court must accept the evidence and grant a new trial. Because he was unable to find the evidence before 30 days, and found afterward, he should not lose his money (Sanhadrin 31).

2. If the court said to him, "Bring witnesses or evidence," and the defendant said that he had no witnesses or evidence, and after judgment was rendered against him he returned and said, "Here are my witnesses or evidence, he is not believed, because it is presumed that there is some falsity in the evidence or witnesses, and because the admission of the defendant is equal to 100 witnesses, therefore his first statement that he has no witnesses is believed (L. c.).

3. If the court did not ask him to bring evidence or witnesses and the defendant himself said he had

no witnesses or evidence, and thereafter he found the evidence, either witness can be accepted, because a volunteer statement by defendant not at the request of the court does not bind him.

4. If the court said to the defendant, "Bring witnesses or evidence," and he said that he had no witnesses or evidence, and the court found him liable, and afterwards when he saw that he was found liable he called someone immediately to testify in the matter, the witnesses lost their credibility and this makes them incompetent as witnesses for this man, and some opinions hold that the witness is incompetent to be witness in any case in the world (L. c.).

5. If the defendant was silent when the court asked him if he could furnish evidence or witnesses, and when the court rendered a decision against him, he says, "Come, so and so, and testify," or he produced documents from his girdle, the testimony can be believed because the defendant was silent before (Tsuvas Horochs).

6. The same rule applies to the testimony of the defendant if he was silent when the court asked if he had more testimony—and afterwards pleaded additional defenses.

7. If the evidence or the witnesses came to the defendant from across the sea and it was impossible for him to know of them; or if his documents were

deposited with a bailee, and the bailee was not in the city when the trial took place, and came afterwards, the witness and the evidence must be accepted as true, because he said he had none, as he did not know of them (Sanhadrin 31).

8. If he stated that he had no evidence or witness either here or in any other place, then they cannot be accepted (L. c.).

9. A defendant against whom an action was begun by reason of an inheritance which he received while a minor, and at the trial he said he had no witnesses or evidence, and after he was found liable he brought witnesses or evidence, they must be accepted, because he could not have known his father's business.

10. If, however, it is certain that he knew of the evidence before and did not bring it, it cannot be accepted (L. c.).

11. If the defendant can prove that he did not know before of the evidence or witnesses, he can bring them, and a new trial demanded.

## CHAPTER XXI.

### IF THE DEFENDANT PROMISED TO SETTLE ON A CERTAIN DAY AND MET WITH SOME ACCIDENT AND FAILED TO SETTLE.

1. If the defendant makes a promise with a form of an agreement (Kinyon) that he would come on a certain day and take an oath, and be released of his claims, and if he fails to attend on said day, the other party should be believed in his claims and be entitled to collect the full amount without any oaths; or if he promised to come on said day and receive an oath and afterward received the claimed money from the defendant, and if he failed to come he should lose his right and the defendant shall be released without any oath, and the day passed, and he failed to come, the condition must be fulfilled and he is not entitled to additional time (Yesrusalmi Kidushin).

2. If the promiser can furnish a good excuse that it was impossible for him to appear on account of an accident, then he is entitled to another grant of time. The accident, however, must be such that it does not happen often. If the accident is such that it can happen often, then he lost his right, because such an accident must be stipulated at the time of the promise (Ourch Hasulchon).

3. If a man made an agreement with another, that

if he does so and so on a certain day, then he will receive a certain sum of money, and on that day an accident happened and the other failed to do this, the promiser is not bound to pay the amount because he did not fulfill the condition (Schach).

## CHAPTER XXII.

### IF THE PARTIES APPOINT A RELATIVE OR AN INCOMPETENT.

1. If the parties appoint a relative or an incompetent as judge, or as witness, to pass upon a claim, the decision is binding. If there was a form of agreement (Kinyon), on that condition it is valid. Even before the decision was rendered, nobody can withdraw, and if there was no form of agreement, if the decision was rendered nobody can withdraw, and if the decision was not rendered either party can withdraw (Sanhadrin 24).

2. The appointment of the relative or incompetent as judge or witness must be made in the presence of a competent judge. There is an opinion, however, that even if it was not made in the presence of a competent judge it is valid (Schach).

3. When the parties appoint the incompetent judge or witness they must stipulate that they undertake to be satisfied with the judge or the witness

of the relative or incompetent so and so, whether win or lose, whichever way it will be decided (Oruch Hasulchon).

4. If, however, he deposits money as security for obeying the decision in the hands of the relative judge, that cannot be considered an appointment as judge, so long as it was not stipulated that he can decide the case (L. c.).

5. It is disputed if the parties appoint a relative judge as three judges or a relative witness as two, if it is valid or not (Rachsi).

6. If the relative judge made a mistake in the decision or he was appointed to decide a law decision, and he made arbitration, even if it was a form of agreement it can be withdrawn by the consent of the two parties (Oruch Hasulchon).

7. If the defendant was found liable and afterward he claimed that he never appointed the relative as judge and no one can be found to prove the appointment, then the defendant must swear (Hises) and he is released from fulfilling the decision, even if the judge contradicts the defendant (Tur).

8. If one of the parties is ordered to take a thora oath, and the other says, "Swear on your honor and I will release you," or "Swear on your honor and I will pay your demand in full," if there was a Kinyon it cannot be withdrawn, and if there was no Kinyon

it can be withdrawn before taking the oath, but not afterward (Sanhadrin 24).

### CHAPTER XXIII.

#### WHEN THE JUDGE OR ARBITRATOR IS BELIEVED TO SAY IN WHOSE FAVOR HE DECIDED.

1.\* As long as the parties are still before the judge he is believed to say, this one won and this one lost the case, and the parties are not allowed to contradict the judge, because he is believed like two witnesses.

2. After the parties left the court, the judge is believed like one witness. If the judge is not a relative or incompetent, then the party who contradicts the judge must take an oath (*thora*) and is believed.

3. If the case was tried before two judges they cannot be contradicted in any event (Kidushin 74).

### CHAPTER XXIV.

#### THE PLEA OF THE PLAINTIFF MUST BE HEARD FIRST.

1. If the fortune and the credit of the defendant can become hurt in value on account of the claim, then the defendant must be heard before (B. K., p. 64).

2. Explanation. If R claimed from B that he

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\* Referring to the time when knowledge of writing was not universally used, misunderstandings arose, the following principles were applied.

owes him a debt on a note, or with witnesses, and B cannot deny it because of certain facts, and B claims that he left a pledge with R and he asks time to prove his contention, and the judge knows that he has witnesses, but does not know that he needs more than 30 days, then he cannot receive any time and must pay immediately without delay, and afterwards he can claim his pledge.

3. If, however, the court sees that the fortune or the credit of the defendant can be prejudiced or there is a market for the pledge at present, and afterward the pledge will have to be sold at a lower price, then the court can grant the defendant the time requested.

4. If the court understands that the defendant's plea is frivolous, and is put forth for the purpose of delay, the judge has the right to refuse his request and order the amount paid at once.

5. If the defendant may lose his witnesses because they must go across the sea, and if they are not examined at once, they will not be able to testify afterward; if the plaintiff will not be prejudiced, then the defendant's witnesses may be heard before the plaintiff's witnesses. If, however, the plaintiff's witnesses are also about to go across the sea, the plaintiff's witnesses must be heard first.

6. If the plaintiff requests the court not to decide the case at once, because he has additional claims

against the defendant, but he does not want to plead all claims now, the request of the plaintiff must be granted, unless the credit of the defendant will be prejudiced by delay.

## CHAPTER XXV.

### IF A JUDGE RENDERS A WRONG DECISION, WHEN CAN HE CHANGE IT AND WHEN MUST HE PAY.

1. If the court rendered a decision against the law as laid down by the Talmud and other authorities, the decision is void, even if it was rendered by three judges selected by the parties, even if the money is taken from the defendant by the court and paid to the plaintiff, the money must be returned and a new decision must be rendered (Sanhadrin 32).

2. If the money cannot be recovered because the plaintiff went across the sea, or has become poor, then the judge must pay it, provided he personally took the money from the defendant and paid it to the plaintiff and provided further that he was not appointed by the parties and even he is an expert, or if he is appointed by the parties and is not an expert, but if the money was paid by the defendant directly to the plaintiff, the judge is not liable for the money (L. c.).

3. If the mistake was made in a law upon which

there is a difference of opinion and it is not decided who is in the right, only it is customary to decide the law like one of the authorities, and the judge decided against the opinion held by said authority, and did not know of the dispute; if the judge was an expert and appointed by the community or appointed by the parties, he is not liable to repay, even if he took the money of the defendant with his hands and gave it to the plaintiff (L. c.).

4. If the mistake was made in the decision by three judges and if they all decided in the wrong way, each one must pay one-third of the amount of loss. However, if there was an argument and two of the judges won by majority, and decided the wrong way, the two must pay two-thirds and the third part must be lost by the defendant, because the two cannot pay the last one-third, because they can say, "Without the third judge we could not decide," and the third judge can claim, "If you listened to me you would not have to pay anything, therefore the loss must fall on the defendant (Ramo).

9. If the mistaken decision was rendered by five judges and two argued against it, but the majority was in favor of it, the three must pay the full amount because they did not need all the five judges to render a decision (L. c.).

10. If the judge made a mistake and directed an

oath to be taken by one who is not obliged to do so according to law, and the party refused to take an oath and submitted to arbitration to pay one-half of the amount without an oath, and afterwards it is found that he is not obliged to take an oath, he can withdraw from the arbitration. The same rule applies if the plaintiff released the defendant by arbitration on account of a wrong direction to take an oath (L. c.).

## CHAPTER XXVI.

1. If the defendant is recalcitrant and it is not in the power of the judges to force him to obey the law, then he must be notified that if he does not obey it, the plaintiff will obtain permission of the judges to file a complaint with the secular judges, provided judges know that the defendant is liable according to the law of the Thora; for instance, if the plaintiff has a note or witness (Ramo).

2. It is permitted for the judges to testify before the secular tribunal as witnesses that the recalcitrant party owes money to the other (L. c.).

## CHAPTER XXVII.

### NO JUDGE OR ANY OTHER MAN MAY BE CURSED.

1. If a man curses a judge he violates two commands of the Thora, the command against cursing a judge (Exodus 22) and command against cursing an ordinary man (Leviticus 19). Even if the judge is deaf and does not hear and suffers no pain, it is forbidden to curse. Even a dead man it is forbidden to curse (Schevuas 35).

2. It is even forbidden to curse one's self.

3. If one slander an educated man the court has the right to punish the slanderer, even by flagellation (Y. D. 242-334).

4. It is forbidden to slander even an ignorant man, and the court has the right to punish the slanderer according to the time and the person slandered (L. c.).

## ה לְכֹת דִינִים

להן סופרי הדינים ויטענו בפניהם וכיצא בזה עושים לת"ח שתורתו אומנתו וזילא ביה מילתא למילול לב"ד ולערער בהדי ע"ה.

(חשו המשפט ס' י"א ק"ד)

מצוחה לדין לחתיכל להם בפשרה שיאמר במה אתם רוצחים יותר בפשרה או בדין. (סנהדריו ז' – ח"מ ס' י"ב)

כי אתה רב דימי א"ר יוחנן הותקף את חבירו אחד אומר נדונן כאן ואחד אומר נלך למקום הוועד כופין אותו וילך לבית הוועד אמר לפניו רב כי אליו עוזר הנושא בחבירו منه יוציא מנה על מנה אלה כופין אותו ודין בעירו.

איתמר נמי א"ר ספרא א"ר יוחנן שנים שתעצמו בדיון אחד אומר נדונן בכאן ואחד אומר נלך למקום הוועד כופין אותו ודין בעירו ואם הוצרך דבר לשאול כתובין ושולחין ואם אמר כתבו ותנו לי מיי זה טעם דעתוני כתובין ונוחתין לו אמר אםירם הלכתא כופין אותו וילך למקום הוועד א"ל רבashi לאמייר והוא אמר ר' אליעזר כופין אותו ודין בעירו ח"מ היכא דקאמר ליה לוחת למלה אבל מלוה עבד לוחת לאיש מלוה. (סנהדריו ל"א – ח"מ ס' י"ד)

הנהו לעוואי דאתו לקמיה דרבא אוקי רבא תורגן בינהם והכى עביד הци והוא תנן שלא תהא סנהדרין שומעת מפני המתורגן רבא מידע הוא ידע מי דהוי אמרי אהדורוי הוא דלא הויה ידע.

(מכות ז' – ח"מ ס' י"ז)

הרמב"ם כתב יש לדין לדון דין טמננות ע"פ הדברים שדעתו נוטה בהן שהןאמת והוא מהגמרא כתובות פ"ה היהआויתא דאייחיבה שבבואה כי דיןא דרבא אמרה ליה בת רב חסדא ידענא בת דחשודה אשבעותא אפקה רבא לשבואה אשכנגדה זמנין הו יתבי קמיה רב פפא ורב אדא בר מתנה אייתי ההוא שטרא גביה א"ר פפא ידענא ביה דשטרא פרוע הוא א"ל אייכא איש אחרינא בהדי דמר א"ל לא ע"ג דאייכא מר ע"א לאו כלום הוא א"ל רב אדא בר מתנה ולא יהא רב פפא כבת רב חסדא; בת רב חסדא קי"ל בנונה מר לא קי"ל בגינוי אמר רב פפא השתא אמר מר קי"ל בנונה מילתא כנון אבא מר ברי דקי"ל בנונה קרענא שטרא אפטימה קרענא ס"ד אלא מרענא שטרא אפטימה.

(ח"מ ס' ט"ז).

אמר רבא הלכתא מקיים את השטר שלא בפני בע"ד אפילו עומד וצוחה ואי אומר נקיתו לו זמנה עד דמייתינא מהדי ומרענא דשטרא נקטין ליה. (ב"ס קי"ב).

אבי אשכחה לרבות יוסף דהוי מעשה אנומי אל והוא הדיות  
אנן ותניא לפניהם ולא לפני הדיות א"ל אנן שליחותיהם כא עבדינן  
מיד דוחה אהדות וחלאות (ניטן פ"ח).

כי עבדינן שליחותיהם במילתא דשכיה ואית ביה חסרון כיס  
אבל מילתא דשכיה ולית ביה חסרון כיס אי נמי מילתא דלא  
שכיה ואית ביה חסרון כיס לא עבדינן שליחותיהם.

(ב"ק פ"ד — ח"ט ס' א')  
ירושלמי המביש את הזקן נתן לו בושתו שלם הובא בטור  
ח"ט ס' ב'

תניא אמר ר' אליעזר בן יעקב שמעתי שב"ד מכין ועונשין שלא  
מן הדין ולא לעבור על ד"ת אלה לעשות סייג לתורה ומעשה באחד  
שרכב על הסום בשבת והביאו לה' וסקלווה לא מפני שרואי לכך  
אלא שהשעה צריכה לכך. (סנהדרין מ"ז — ח"ט ס' ב')

אמר שמואל שנים שעניהם דין אלה שנקרה ב"ד חצוף.  
(סנהדרין ה' — ח"ט ס' ג')  
רב הונא כי הוויأتي דין קמיה מכינוף ומיתיעשרה רבנן מבוי.

רב אמר כי היכי דນמתייהו שיבא מכשורתא.

(סנהדרין ז' — ס' ג')

כל הכהר לדון כשר להיעיד ויש שהוא כשר להיעיד ואינו כשר  
לדון. (נרת מ"ט — ח"ט ס' ז').

איתמר רב יהודה אמר לא עביד איש דין לנפשיה רב נחמן  
אמר עביד איש דין לנפשיה היכא פסידא כולי עלה מא. לא.  
פליני דעתך איש דין לנפשיה כי פליני היכא דלי' פסידא והלכה  
רב נחמן. (ב"ק כ"ז — ח"ט ס' ד')

אמר רב יהודה ג' שנכנטו לבקר את החולה רצוי כותבין רצוי  
יעשין דין שנים כותבין ואין עושין דין אמר רב חסדא ל"ש אלה  
ביום אבל בלילה אפילו שלשה כותבין ואין עושין דין Mai טמא  
דחו"ל עדים ואין עד נעשה דין. (ב"ב קי"ד — ח"ט ס' ז')  
רב מנגיד אמרן דמקdash בשוקא ואמאן דמצער שלוחא דרכנן  
ופרש"י שליח שמזמין לדין מפני הדינים וכמ עלייו והכחו.

(קדושים י"ב — ח"ט ס' א')

הנותל שכר לדון דיןין בטלים. (כבודות כ"ט — ח"ט ס' ט')  
הנתבע איינו יכול למנות מושגא שיבא לב"ד ויישיב בעדו לתובע  
והוא ישב בביתו ונשים יקרות שאין כבודן לבא לב"ד משגרין

## CHAPTER XXVIII.

הלוות עדות

### THE LAW OF WITNESSES.

1. It is a command of the Thora that every man who knows about a controversy in a civil case, to appear before the court and testify. According to the rabbinical law he must appear and testify in a civil case, even if he is the only one witness, because the defendant may admit his liability if he finds that there is a witness (B. K. 56).
2. A relative of the parties or an incompetent, or one interested financially to the litigation, is not bound to testify, because his testimony is of no use (L. c.).
3. One who is not certain of his testimony or of the circumstantial evidence must not testify (L. c.).
4. When the court or a party subpoenas a witness, he is bound to come and testify before the court about everything he knows (L. c.).
5. One who is bound to testify, and refuses to do so, violates a command of the Thora, and cannot be forgiven by heaven until he pays the money lost to the party, even if he is only one witness who, according to law, can only obligate the defendant to take an oath. If he does not testify he is liable to pay the money lost by the law of heaven, because maybe

the defendant would have refused to take an oath and pay the claim (L. c.).

6. The witness must testify only what he knows exactly without adding or diminishing even one word. He is forbidden to testify that he saw the matter when he did not see it, even if it is clear in his mind that it is true, because he heard it from a high authority who he is sure would not say a lie. He must testify exactly how he learned it by hearsay (N. H.).

7. It is permitted to a man to announce in the synagogue by way of ban that whoever knows anything in this case shall come and testify, or if anybody knows where he can find his evidence, shall come and notify the court (Schvuas 31).

8. If a very educated man is summoned before judges who are not so educated as he is (in a civil suit) to appear as witness, it is not his duty to appear, but the court must send to him three attendants before whom he shall testify (L. c.).

9. The burden of proof is upon the plaintiff. However, if the defendant is recalcitrant and the witnesses fear to testify as to his liability, and these facts are proved to the satisfaction of the court, then the court can compel the defendant to bring these witnesses to court (B. K. 46; B. M. 39).

10. The witness must stand while testifying, but if the witnesses are educated men, they may be permitted to testify while sitting (Schvuas 30).

11. The judges must be seated while listening to the testimony (L. c.).

12. The judge must understand the language of the witness. It is forbidden to receive testimony through an interpreter. If the judge understands what is said but cannot speak, then an interpreter is permitted (Machos 6).

13. The court must impress disgrace of the witness and must notify them of the severe punishment which the witness will receive for false testimony, in this world and the next world, and his shame in the eyes of the one who hired them (Sanhadrin 29).

14. The judge must command the people to vacate the court house.\* Only the oldest witness remains with the judge, who cross examines him by saying, "How do you know that this man owes money to the plaintiff." If he says that the defendant told me that he owes money to the plaintiff or another man, who is educated, told me that the defendant owes to the plaintiff, the testimony is void, unless he himself saw that the money was given by the lender to the borrower, or the borrower confessed to him that he owes

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\*When there is no other room for the deliberation.

the money to the plaintiff, and asked him to be a witness (L. c.).

15. The other witness is then called in and is examined, and if his testimony is equal to that of the first witness, then the judges must deliberate on the law and finish the trial (L. c.).

16. If the two witnesses testify in the same language, using the same expressions, it is presumed that the witnesses are false, and they therefore must be given a stricter cross examination (Tur).

17. If the witness sends his testimony in writing, it is incompetent (Gitin 71).

18. If witnesses are signed to a note from a borrower to a lender, and if they died, the note can be collected, because their signature is as though they testified while living, because the door shall not be locked for the borrower (Mamanides).

19. So long as the witness remembers the facts of the testimony he can testify; even if he forgot the facts, but he can recollect through his writing, the testimony is valid (Kesuboth 20).

20. Even if some other man reminds him and he recollects he can testify, even the other witness can remind him. If the plaintiff reminds him, he cannot testify (L. c.).

21. The testimony of the witness must be in the

presence of the defendant; if the defendant is absent at the examination of the witness, the examination is not effective (B. K. 112).

22. If the plaintiff was ill or the witness was ill, then the court is permitted to receive the testimony of the witness in the absence of the defendant, if the witness was about to go across the sea and the court sent for the defendant and he did not come, or he is not in the city, then it is permitted to receive the testimony in the absence of the defendant (L. c.).

23. A claims a certain sum from B and the witness lives in another city, then the court must command to B to have the trial take place in the city where the witness resides, and they will testify in his presence, if he wants to, or if not, the court of the witness' city can examine the witness in the absence of the defendant, and they will send the testimony to this court, and they will decide according to the testimony (Rabiny Yruchom).

24. If the defendant brings witnesses to free himself, the testimony can be received in the absence of the plaintiff, provided nothing has to be taken away from his possession (Ran).

25. If the defendant is a minor, no testimony can be received, because a minor's presence is like his absence, unless he has seized something in his possession. Then a guardian must be appointed by the

court and the testimony will be received in his presence (B. K. 113).

26. Testimony must be received by three expert, acknowledged judges, who know the law of witnesses verbal or not verbal, and if two have received testimony or three, and they are unfit to act as judges, no decision can be rendered on that testimony.

27. The judges must write down on a document the names of the witnesses, and must sign the document, when they send the testimony to another city (Ramban).

28. If a defendant claims that he has two sets of witnesses and brought one set and they testified that they know nothing, the defendant is permitted to bring the other set, because his reputation for veracity is not impaired (Sanhadrin 23).

29. The acceptance examination of the witness must be during the day, and if it was in the night it is not valid, even though the witness had to go across the sea. And the case must not be decided on such testimony. If the parties permitted the examination during the night it is valid (Rasbo),

## CHAPTER XXIX.

### No WITNESS CAN CHANGE HIS TESTIMONY.

1. No witness may withdraw or change any part of his testimony two seconds after the examination is concluded, except when his additional testimony further explains it; but if the withdrawal or change is made on the same second of uttering or before another witness testifying immediately after him to the same facts stops or completes his testimony, then the first may make a change or withdraw it (*Shevues* 36).

2. If witness claims the reason they first testified one way and now wish to change or add testimony was on account of duress or mistake, not only they are precluded from making the change, but they may be subject to punishment by flagellation for not testifying properly in the first instance, the first testimony stands, excepting that contradictory testimony may be offered by other witnesses.

If, however, the witnesses wish to offer the additional testimony because the subject matter testified to was to be upon a condition which they omitted to state, as to whether that is permitted there are two authorities, one holding that the addition may be made and the other that it cannot (*Kesuboth* 49).

4. If two witnesses both admit that they testified

falsely, within a few seconds after testifying, then though the testimony cannot be changed or withdrawn, still they are compelled to answer in full, in damages, the amount of the loss of the aggrieved party.

5. If only one of the two witnesses admits testifying falsely, he is bound to answer to the extent of half of the damage sustained. If there are three witnesses on the subject and only one admits that he testified falsely, it is doubtful whether he must answer in one-third of the damage or not, because without him the defendant can be found liable on account of the two (Tschuvshrosh).

6. If one witness testified that he saw the occurrence and the other says that he did not see it, then if they were far apart at the time it cannot be contradicted; but if they heard from the same sources, then the testimony can be contradicted. In the second event it only controls where the second one says that he was present and heard. If, however, the second witness denies that he was there, even though the first one says that he was present at the time, it cannot be contradicted.

## CHAPTER XXX.

## COMBINATION OF TESTIMONY AND NO CROSS EXAMINATION NECESSARY IN CIVIL ACTIONS.

1. According to the Thora law, seven points in cross examination of the witness direct and indirect is necessary in both by civil and criminal action, viz.: (1) Release, (2) year, (3) month, (4) week, (5) day of month, (6) what hour, (7) place. If the witnesses are uncertain or contradict one another in one of the points, then the testimony is void; by Rabbinical enactment, because it was found that the door of the borrower may be locked on account of that, because the lender can say "maybe my witness will be uncertain in one point and then he will refuse to lend money." Therefore the Rabbinical enactment that in civil action all the seven points are not absolutely necessary to be asked, but if they are asked and witnesses contradict each other, then such testimony is void, except if the witness claims that they do not remember (Sanhadrin 52).

2. If the court believes that there is some misrepresentation in this case, then they must examine the witnesses on the aforesaid seven points (L. c.).

3. If one witness testifies that the one made a loan on the month of Nison and the other stated it was in the month of Eir, or that one says the loan was made

in the city of Jerusalem and the other said it was in the city of Lud, or if one witness said that the loan was a barrel of wine and the other that it was oil, that, of course, is even when both barrels are claimed, then the testimony is rejected, the defendant becomes free even from taking an oath of denial.

4. If one witness testifies that the money loaned was new and the other that it was old, or that it consisted of both old and new, or if one witness says that it was in one room and the other that it was another room, provided it can be seen what takes place from either room into the other, the testimony is valid.

4a. If one testifies that the loan was 200 zus and the other that it was 100 zus at the same time and claimant demands 200 zus, then the court must decide that there is 100 zus due, the reason for that being, that there is no visible dispute to at least 100 zus, because the 100 is included in the 200 and the one witness of the other maybe have not seen more than 100 zus, and both witnesses may be correct.

5. However, if the claim is but for 100 zus and the defendant denies the claim and there are two witnesses, one testifying to 200 zus and the other to 100 zus, the testimony cannot be continued, because the one testifying to 200 is contradicted by the plaintiff and in order to contradict the one, the defendant must take an oath denying the claim for 100 zus.

6. If the complainant demand 300 zus and claims that he gave the money at different times and there being two witnesses testifying to that fact, the witnesses' testimony may be combined and decision made accordingly for 100 zus.

7. However, if the complainant claims that the money was given at one time and the witnesses state that it was on two different occasions, then the testimony cannot be combined, and the defendant must take an oath denying the allegations (*Oruch Hasulchon*).

8. If one state the loan was silk goods and the other that it was wool, or if one says that the loan was new coin and the other that it was old coin, being that there is a similarity and a mistake is possible, and demand is for silk or new coin, the testimony can be combined and the decision must be made for the secondary quality, that is wool or old coin (L. c.).

9. If the similarity is too distant and witnesses' testimony varies as to different kind of goods; for example, the claim is that a barrel of wine was borrowed and the other says that it was oil, then the testimony cannot be combined because of the wide contradiction (L. c.).

10. If the testimony is that the defendant admitted in the presence of one witness that he owed

money for a barrel of wine and the other witness says that in his presence the defendant admitted money the value for a barrel of oil, then the testimony can be combined and it must be decided that the defendant must pay the value of wine, and that depends upon the wisdom of the court as to whether there is a possibility of an honest mistake.

11. If the complainant demands 100 zus and two witnesses testify that it was 200 zus due, the defendant must then take an oath (Thora) denying the 100 zus, and the claim is disallowed (Neswas).

12. If a claim is made for five different loans at separate times aggregating the sum of 1,500 zus, and the claimant produces five witnesses who testify their knowledge to loans of 100 zus, 200 zus, 300 zus, 400 zus and 500 zus, respectively, each mentioning a different date, the defendant must pay 700 zus and take an oath denying the balance of 800 zus claimed. Explanation: One witness testifies to 400 zus and the other to 500 zus, by the principle of combination there would be an allowance of 400 zus. There being 100 zus difference and one testified that he knows of a 300 zus loan, by combination 100 zus more are added. There being 200 zus difference from the 300 zus claimed, by combination 200 zus must be awarded, which if added to the others will total 700 zus.

One witness stated.....	500 zus
And the other.....	400
By the law of combination	
two witnesses agree for.	400 zus
100 left from the witness	
stated.....	500
100 taken from the witness	
stated.....	300      100
200 left from the 300 and	
the one witness stated	
200 it is a combination	
for.....	200
<hr/>	
Total.....	700

13. Because of the testimony of the first witness of 100 zus, the defendant must take an oath to contradict the one that testified 100 zus, and also include the additional 700 zus, making the difference of the 800 zus above mentioned (Tsuvas Horochs).

14. If the witness agree that a loan was made on a certain day, but one witness says that it was 100 zus that he saw given, the second contradicts him and says that it was 200 zus, the third says 300 zus and the fourth 400 and the fifth 500 zus, and the claim is for 1,500 zus, it must be decided that 200 zus must be paid. The reason for this is because at least two witnesses agree that it was not more than 200 zus and the testimony of the second and the third wit-

nesses is taken into consideration, ordinarily the first and second witnesses' testimony would be considered and only 100 zus awarded, but because the others claim at least 200 zus, the testimony of the second and third witnesses can only be considered, and the one testifying about 100 zus is not considered. The authority is that the testimony of only two witnesses to any given fact cannot be contradicted by any number of other witnesses. No oath is necessary on the part of the defendant as to contradict the third witness, because he has two witnesses substantiating him to that extent.

15. The same rule as aforesaid applies when a question of payment arises; for instance, a claim for 200 zus which was due on one day of Nison, and two witnesses are produced, one testifying that he saw 100 zus paid and the other that he saw 200 zus paid, both claim that it was on a date after the loan was made or even on the same day the loan was made, credit must be given to the extent of 100 zus.

16. Witnesses need not testify at the same time, but one may testify on one day and the other on another day, and need not give testimony in the same court, but may be in two different courts; but all the judges that heard any part of the testimony must confer and then decide after deliberation; and if, however, these two witnesses testified before three different tribunals of courts, then one judge

from each of such tribunals may convene and give a decision which becomes binding. Witnesses who heard the testimony may testify to what the testimony was, and that may be taken in place of the original witnesses.

17. If two witnesses could be produced who will testify as to the contents of any document which was destroyed or lost, then its contents can be established when two witnesses sign a note, but if only one witness signs, then the contents cannot be established by the testimony of the other witness.

18. The court may send written proof of the witness' testimony which is acceptable, and decision can be rendered through the written proof. A judge who presides in any part of the testimony cannot be combined with another witness to testify before another court, for the reason that the testimony of the judge comes from the examination of the witness and the testimony of the witness comes from seeing the facts of the transaction. Therefore they cannot be combined.

## CHAPTER XXXI.

1. If two witnesses testify that R loaned 200 zus to B on a certain day, and another two witnesses contradict the witnesses, then B is not bound to pay the 200 zus to R and the witness is a doubtful incompetent, therefore each set separately can be com-

petent to testify, but one of that set and one from the other set cannot be competent, because one of the set is sure incompetent (Schvuas 46).

2. If one lender has two notes of one borrower, one note was the sum of 100 zus and one note was 200 zus, and the borrower denies the two loans, and the doubtful witness two sets, each one signed on one note and the other set on the other note, then if the lender brought for collection the two notes at one time he can collect only the note of 100 zus and the borrower must take an oath for the balance and afterward the 200 zus note must be taken away and destroyed. If the lender brought one note before for collection and collected it, afterward he can collect the other note (L. c.).

3. If two lenders brought two notes for collection of one borrower and the two doubtful witnesses signed on the two side notes, each lender must swear and can collect the note even if it is written believing in the notes they cannot collect without oath (L. c.).

4. If one lender has two notes of two borrowers and the two sets of doubtful witnesses signed on that note, and the borrowers deny the loan, each one must swear and they are free. If one of the borrowers admitted, it can be collected from his unsold property.

5. If the lender collects one note at one time he later can collect the other one.

6. If the plaintiff produces witnesses and they are contradicted and after they present another set and they are contradicted, until 100 sets, and afterward he presents one set and they are found correct, the case can be decided on the ground of the witnesses (Macohs 4).

## CHAPTER XXXII.

1. If B admits before witnesses that he owes to R 100 zus, the witness must not testify before the court that B owes R 100 zus, but must say exactly what they heard, because B can some time free himself with the plea that he said it in a joke, or because he wishes to be thought not rich (Sanhadrin 29).

2. If A hired false witnesses and through them B collected money from R, if B admitted the testimony to be false, he is bound to return the money; if B denies the falsity but the witnesses confess that they testified falsely, they must pay. However, if the witnesses do not admit that they testified falsely, but A admits that he hired them to testify falsely, A is free by the public law, but he is liable by the law of heaven (B. k. 26).

3. If, however, the fact is true that R owes money to B, but the witness testified falsely because he knows nothing of the matter, then A is free even by the law of heaven (L. c.).

4. If, however, A did not pay the witness but persuaded him to testify falsely without compensation, then there are two opinions whether A is liable under the law of heaven (L. c.).

### CHAPTER XXXIII.

#### WITNESS INELIGIBLE ON ACCOUNT OF RELATIONSHIP.

1. Everyone who is eligible to be a judge is ineligible to testify, except a friend or an enemy may be eligible as witness even if he is ineligible as judge (Nido 49).

2. Relatives are divided into three classes:

Class 1 includes: Fathers and sons, brothers, fathers-in-law, sons-in-law, brothers-in-law, husband and wife (Sanhadrin 27).

Class 2 includes: Cousins, grandsons and their wives.

Class 3 includes: Sons of cousins, or second cousins, great-grandsons.

(a) Relatives of Class 1 are ineligible as witnesses for their relatives in Class 1 and 2.

(b) Relatives in Class 2 are ineligible as witnesses for their relatives in Class 1 and 2, but are eligible as witnesses for their relatives in Class 3.

(c) Relatives in Class 3 are eligible as witnesses for their relatives in Class 2 and 3 (L. c.).

There is a difference of opinion whether relatives in Class 3 are eligible as witnesses for their relatives in Class 1.

4. If a person is ineligible as a witness for a woman he is also ineligible as a witness for her husband, because man and wife are one, and if he is ineligible as a witness for a man, he is also ineligible as a witness for his wife, for the same reason (Sandadrin 28).

5. If two women are relatives of Class 2 their husbands may testify for each other, and the two of them may be witnesses in the same case for another person.

6. If the women are relatives of Class 1, then their husbands cannot testify for each other (L. c.).

7. If one woman is a relative of Class 1, and the other is of Class 2, for instance, an aunt and a niece, their husbands cannot testify for each other; some opinions hold, however, that they may testify (L. c.).

8. The father of the husband and the father of the wife may testify for each other (L. c.).

9. If R married a woman named B, and B had a son by a former husband, named C; and B had a son named D, and B died; R married another woman

who had a son named E; E may be a witness for C, although D is a relative to both E and C.

10. A husband and his wife are in Class 1; therefore, the husband cannot testify for his wife's son by a former husband, and not for her son's wife, nor for her daughter, nor for the husband of her daughter, nor for her father or mother, nor for the husband of her mother, nor for the wife of her father (L. c.).

11. A man is forbidden to testify for his intended bride, but is eligible as a witness for her relatives (L. c.). Note: "Referring to the time when a part of the marriage was performed at the engagement. But now when engagement means only a promise to marry, the intended bridegroom is eligible as a witness for his intended bride. If the bridegroom has not an interest in the testimony.

12. This rule of ineligibility is not based upon suspicion, that the testimony may be false because of friendship; even the two brothers Moses, our teacher, and Aaron the high priest, would be ineligible as witnesses for each other, because it is a command of the Lord.

13. If R and B married two sisters, R cannot be a witness for B. If R's wife died, even if she left children by R, he can testify for B.

14. If, however, the case was decided when R

and B were related, in favor of the defendant, because the plaintiff could not bring any witness, the case cannot be opened again after the death of his wife (Beth Joseph).

15. If a man at the time when he saw the witness was not related, and afterward when the trial took place he became a relative; for instance, he became a son-in-law to the defendant, or when he saw the witness he was his son-in-law, and afterward when the trial took place his daughter died, then he can not act as witness (B. B. 128).

16. However, when he saw the witness he was unrelated and afterward he became his son-in-law, and when the trial took place his daughter died, then the witness is eligible, although for some of the time he was related (L. c.).

17. If a man made a will before witnesses who are ineligible for him, but who are eligible as witnesses for his sons, then there are two opinions; one is that the witnesses are not eligible because they were related when they were accepted as witnesses, and the other is that they are eligible because when they were called upon to testify as to collections they are eligible (Tur.).

18. If a witness is ineligible because he may benefit by the result of the case, he may relinquish the benefit to testify (B. B. 43).

19. A witness who is related to the surety man is ineligible as a witness for the borrower, for or against.

20. Witnesses who are related to each other or to the judges are not eligible as witness (Jerusalmi).

21. If the community appoints official witnesses and it enacts that no other witnesses shall be eligible, such official witnesses are eligible even if they are related to the parties or to the judges because they are official witnesses (Tur).

#### CHAPTER XXXIV.

THOU SHALT NOT RAISE A FALSE REPORT; PUT NOT  
THY HAND WITH THE WICKED TO BE AN  
UNRIGHTEOUS WITNESS (Exodus, 23).

1. A wicked man is ineligible as witness, even an honest man, when he knows that the other witness is wicked, shall not combine with him to testify even to the truth (Schevuas 30).

2. What is wickedness? To disobey commands for which the punishment is flagellation or death, or one who disobeys for his benefit or because of spite (Sanhadrin 27).

3. If a man disobeys a command which is not punishable by flagellation, he cannot act as witness according to the enactment of the rabbinate (Ramo).

4. Grave diggers who dig a grave on the first day of Holiday, which is forbidden according to the law, are eligible as witnesses because they think that they fulfill a great command by attending to the burial on the same day of death (Sanhadrin 27).

5. One who strikes or attempts to strike another is ineligible as a witness (B. Y.).

6. One who disobeys an oath, either a vain oath *e. g.*, he swears of wood that is gold, or a false oath, *e. g.*, he swears that he will pay the money to the other and fails to pay, or one who refuses to obey a ban imposed by the community is ineligible as a witness (Sanhadrin 27).

7. There is a difference of opinion that an oath which can be fulfilled by the swearer in future, does not make him ineligible as a witness (L. c.).

8. A slaughterer of cattle or poultry who decides that it was slaughtered according to law and that it is permitted to eat the meat thereof, and afterwards it is found that it was not slaughtered according to law, and it is forbidden to eat, he is ineligible as a witness (L. c. 25).

9. The same rule applies when a butcher who sells meat as Kosher which is not Kosher (L. c.).

10. A thief or robber cannot act as a witness from the time he committed the theft or robbery,

even if he returned the articles by force, he cannot act as witness. If, however, he returns the articles of his own good will, and is repentant he is eligible (Tur.).

11. Those who share with the thief or robber the stolen articles once, it is disputed whether they can act as witness or not (Oruch Hasulchon).

12. However, if they are professional sharers with the thieves and have practiced same as a steady business they cannot act as witnesses (L. c.).

13. If a witness was found to have testified falsely, even if he paid the damages, he is ineligible as a witness to anything which requires witness from the time of the giving of the false testimony, even though the contradiction was made a long time afterward until he repents (see Chapter 34, Sanhadrin 27).

14. Witness who signed on a note dated before the loan was made cannot act as witness.

15. The lender and the borrower who are parties to a usurious loan, cannot act as witnesses in any case (Sanhadrin 24).

16. One who seizes an article found by a minor, a deaf person, or a fool, or one who forces to sell another real or personal property without the consent of the owners, even though he pays for the article, cannot act as witness (L. c. 24).

17. A shepherd who feeds the cattle or sheep in a field without the consent of the owner of the field, cannot act as witness (L. c.).

18. Professional gamblers (who have no other occupation, and people who conduct races), and persons who have lost their respect in the eyes of the community, as vagrants, tramps, etc., are ineligible as witness (L. c.).

19. If it is found that two witnesses received compensation for testimony they cannot act as witnesses from the time of giving the testimony, even they received the money before the time (Ran.).

20. Heathen or slaves cannot act as witnesses (B. k. 21).

20a. If R and B testified that C lent to one of them money on usury, they are believed to spoil the reputation of C, to make him ineligible as witness, although the borrower is not believed against himself because no person can be expected to testify against himself. Therefore the borrower's testimony must be divided and he is believed for the lender and not for himself (Sanhadrin 25).

21. No man can convict himself upon his own confession, because no man can make himself wicked. Every man is related to himself and a relative is not eligible as a witness (L. c. 9).

22. The testimony of witnesses who are forced or tortured can not be accepted as evidence (Kesuboth 19).

23. If A testifies that X is guilty of robbing, and B testifies that X is guilty of the crime of usury, X is ineligible as a witness. This is because A and B argued that X is guilty of a crime and only differ on the nature of the crime (L. c. 25).

24. If two witnesses testify that R broke one of the commandments and R is ineligible as a witness, and two witnesses testified that R has repented, and he regained his eligibility, then R can be a witness (Kesuboth 22).

25. If, however, two witnesses testified that R robbed a man and two witnesses testify to the contrary, R is a doubtful witness and therefore, R shall not testify, and money shall not be recovered through his testimony until he repents (L. c.).

26. Witnesses ineligible on account of robbery, are not made eligible by the return of this money. They must repent of their sins before they become eligible (Machos 23).

## CHAPTER XXXV.

### BLIND, DEAF AND DUMB, MINORS, INCOMPETENT AS WITNESSES.

1. A minor is incompetent as a witness although he may be clever, until he becomes 13 years of age and shows growth of hair under the arms (B. B. 55).
2. If one is 20 years of age and does not show growth of hair under the arms, and shows signs of impotency, he can act as witness (L. c.).
3. One who is 13 years, and is not clever in business, his testimony can be accepted for personal property but not for real property (L. c.).
4. If witnesses witness a transaction as a minor and becomes full age at the time the trial took place he cannot testify (Kesuboth 28).
5. However, he may testify as to the father's, brother's, or the teacher's signature (L. c.).
6. An insane person is incompetent to testify. An insane person is not only one who goes about naked, or breaks windows or throws stones, but even one who talks sensibly on some occasions and insanely on others. He is still incompetent to testify (Chgigo 3).
7. An epileptic may testify provided he witnesses the transaction while in sound condition of body and mind. The judge has the discretion to refuse to

listen to him if he finds that he is not of a sound mind (Roch Hachono 28).

8. Fool: One that contradicts himself, does not understand facts, or else he is easily persuaded, without thinking, and is therefore incompetent as witness (L. c.).

9. These facts are submitted to the judge and with his understanding to decide who can act as witness or to be refused (Rief).

10. Persons, when they cannot speak, but can hear, or they can speak and cannot hear, are incompetent as witnesses, because they must be able to hear the commands and questions of the judges, and must answer all cross examinations (Gitin 71).

11. If a man becomes dumb during the time the trial was taking place, the testimony is not valid, even during the time he received the testimony he was able to talk (L. c.).

12. A blind man in both eyes, even though he recognizes the parties by their voices, cannot act as witness.

13. If a man was dumb, or blind during the time he received the testimony, and when the trial took place he recovered, or *vice versa*, his testimony is invalid (B. B. 128).

14. However, if at the time he received the testi-

mony and at the time the trial took place he was in a sound condition, even if in the meantime he was dumb or blind he is competent to act as witness (L. c.).

15. A woman is incompetent to be a witness (R. H. 22; Schvuas 30).

16. However, if none but women are procurable as witnesses in a case they may testify (Ramo).

17. A hermaphrodite is ineligible to be a witness.

18. Every witness that is doubtful, whether he is competent or incompetent, must be refused (L. c.).

## CHAPTER XXXVI.

### THREE WITNESSES TESTIFY AND ONE WITNESS IS INCOMPETENT.

1. If three witnesses are subpoenaed to testify, and one is found incompetent, the testimony of all three is invalid (Makos 6).

2. However, if the incompetent witness was not subpoenaed as a witness, but witnessed the transaction, the testimony of the other two can be taken into consideration.

3. If one competent witness and one incompetent witness testify together and the competent does not know that the other is incompetent, some authorities

hold that the testimony of the competent witness can be taken into consideration as binding the defendant under oath, and the competent witness is believed that he never knew that the other witness is incompetent. Other authorities hold that even if he did not know the other witness to be incompetent, his testimony is void, because he testified together with the incompetent witness (Tur.).

## CHAPTER XXXVII.

### WITNESS INCOMPETENT ON ACCOUNT OF INTEREST.

1. If a witness has an interest in the action, he is incompetent as witness in his behalf (B. B. 42).
2. If, however, the testimony is against himself it is valid (N. Y.).
3. If the witness had an interest when he witnessed the transaction, but at the trial the interest no longer exists, then the testimony is valid (L. c.).
4. Some authorities hold even in the above case the witness is incompetent (Sach).
5. It is a question of fact for the judge whether after taking all the facts into consideration, a certain witness has an interest in an action and whether he should refuse to take his testimony.
6. If a witness has not an interest in the case be-

cause he is poor and if it appears that he will have an interest when he becomes rich, his testimony is valid (B. B. 45).

7. A servant and an employee can testify in a case where the employer is a party (Aruch Hasulchon).

8. If two partners own a field, and another claimed that the vendor defrauded him out of the field, the partner is not competent to testify even as to the portion of the field that belongs to one of the partners, because he has an interest in the outcome of the action (B. B. 42).

9. If, however, the claim is only against the portion of the field belonging to one partner, that is to say, against a portion of the field which has been sold by one partner to another, then the testimony of the other partner is competent (L. c.).

10. The lessee of the field can be a witness provided there is no more fruit on the field to be had (L. c. 46).

11. If a witness has a share in a debt, he cannot act as a witness (B. Y.).

12. R demanded payment of a debt jointly from two persons. One denied the debt and the other admitted that both owed the money. If the money was received in partnership, the testimony of the one that admits is not binding on the one who denies, and the one who admits must pay the entire

debt by himself, because his admission is like 100 witnesses, and he is the surety for the entire loan (see Chapter CXXIX; Tur.).

13. If it was stipulated, however, that each one is responsible for his half of the debt, then the testimony of the one who admits owing the money can be used against himself and against or for the welfare of the other partner (Aruch Hasulchon).

14. If one claims a note debt for 30 zus from three borrowers, and they all claim that they pay, each one can be a witness against the others and the testimony cannot be refused on account of suspicion, provided it was stipulated that each for himself is only responsible (Beth Joseph).

15. If one of the partners admits facts that make him and the other partners liable, he is believed like one witness and can bind or help to free the other partner on an oath, like one witness.

16. If one leased a house and another claimed that the lessee robbed the premises the tenant is competent as a witness, provided he did not pay the rent, and cannot act as a witness if he did pay the rent (B. B. 29).

17. If the owner is not able to purchase any other witness, he may return the rent to the tenant and then the tenant can testify (L. c.).

18. If a man dies and leaves a sum of money in his will for the poor of the city, and his heirs made

a claim of the will, the controversy cannot be tried by the judges and witnesses of the same city, but it must be tried before judges and by witnesses of another city, because they all have an interest in the law suit (B. B. 43).

19. By the enactment of the rabbinical, the board of the city have the right to appoint judges and witness for all claims and they must be competent to all claims even to relatives, because they are accepted by the board of city.

20. The judges and the witnesses must agree in the presence of the defendants and in good faith and shall not come to a wrong decision.

21. If it is agreed that there is some conspiracy and the trial will come to a wrong decision, then other judges and witnesses from another city must be appointed to conduct the trial (Aruch Hasulchon).

### CHAPTER XXXVIII.

1. If two testify that R owes B 100 zus and other two witnesses contradict them, then R is not liable (Sanhadrin 30).

2. If two witnesses testify that R owes B 100 zus and afterwards they repudiate claiming that they testified falsely, their testimony cannot be accepted, because after the first case is closed they cannot retract and B must pay R the 100 zus and he can claim the 100 zus from the witnesses, because they admitted that they testified falsely (Rosch.).

דנוקקין לו אם לא שגרם הפסד לבעל דין לפני עכו"ם והסבירו ראשונה נראה לי עיקר.

(רמ"א — ח"מ ס' כ"ז)  
אמר ר' יוחשע ד' דברום העושה אותן פטור מדייני אדם וחובב בדיני שמים ואלו הן הפורץ גדר בפניו בהמת חבירו והכוכוף קמו של חבירו בפני הדיליקה והשוכר עדי שקר להיעיד והודיע עדות לחבירו ואינו מעיד לו; ומסיק הגمرا אפילו בחד חיב בדיני שמים.

(ב"ק נ"ה)

אם עובד כוכבים תובע לישראל ויש ישראל יודע שעבוד כוכבים נגד ישראל ואין עד אלא הוא והעכו"ם תובעו שייעיד לו אם בישראל יתחייב בדיני ישראל באותו סכום מותר להעיד להיעיד לפני דיניינו איינו ישראלי הן עד א' או ב' אך אם דיניינו איינו ישראלי יחייבו אותו יותר מהדין המבואר לפניו דיניין ישראלי אז אסור להיעיד בעבורו אם לא ייחדו לשם עד וכן אם ייחדו לשם עד ואייכא חילול השם אם לא יעיד איזו מחויב הוא להיעיד.

(ב"ס קי"ג — ח"מ כ"ח)  
תניא אם לא יגיד פרט לאלים שאינו יכול להגידי ואמאי הא יכול להגידי מtopic הכתב; שאני אלם דرحمנא אמר מפיהם ולא מפני כתוב ניטין ע"א התום כתבו בשם רש"י על החומיש שלא ישלהו כתוב ידם לב"ד.

(כתובות ב' — יבמות מ')

אמר ר' חנניה דבר תורה אחד דיני ממונות ואחד דין נפשות בדרישה וחקירה שנאמר משפט אחד יהי' לכם ומה טעם אמרו דיני ממונות לא בעיןן דרישיה וחקירה שלא תנעל דלת בפני לויין.

(סנהדרין ל"ב)

אחד אומר חבית של יין ואחד אומר חבית של שמן הווי עובדא וחיבת רבוי אמר לשולמי חביתא דחמרה מגו חביתא דמשחה ומסקין לדמי.

(סנהדרין ל"א)

נהרדיי אמרו בין הודהה אחר הודהה בין הודהה אחר הלואה בין הלואה אחר הלואה בין הלואה אחר הודהה מצטרפות.

(סנהדרין ל')

איתמר שתי עדים המכחישים זו את זו אמר רב הונא זו באה בפני עצמה ומעידה וזו באה בפני עצמה ומעידה ורב חסדא אמר בחדי סחדי שקרי למה לי.

(שבועות מ"ז)

## הַלְכָוֹת עֲדוֹת

כל זמן שסבירא ראי' סותר את הדין אמרו לו כל ראות שיש לך הבא מכאן עד ל' יום הביא תוק' ל' סותר לאחר ל' יום איינו סותר אמר רשב'ג מה יעשה זה שלא מצא תוק' ל' ומוצא לאחר ל' יום והלכה כרשב'ג. (סנהדרין ל"א — ח"מ ס' ב')

ת"ר בצדק תשפט עמו אך שלא יהא אחד יושב ואחד עומד אחד מדבר כל צרכו ואחד אומר לו קצר דבריך.

(שבועת ל' — ח"מ י"ז)

אל נאמן עלי אבא נאמן עלי אביך נאמנים עלי ג' רועי בקר ר"י אומר יכול לחזור בו וחכמים אומרים איינו יכול לחזור בו.

(סנהדרין כ"ד — ח"מ ס' כ"ב)

נאמן דין לומר לזה זכיתך ולזה חייבתי ב"ד כשבילי דין עומדין לפניו אבל אם אין ב"ד עומדין נאמן ונחזי וכותא מאן נקייט לא צריכא דקראי זכותיתיו ונינהדר ונדיינינחו בשודא דדין.

(קדושים ע"ד — ח"ט ס' כ"ג)

אין נזקון אלה לתובע תחלת ואי זילוי נכסים דעתבע נזקון לו תחלת. (ב"ק מ"ז — ח"ט כ"ד)

אמר ר' חנינא דבר תורה אחד דין ממונות ואחד דין נפשות בධירשה ובחקירה שנאמר משפט אחד יהיה לכם ומה טעם אמרו דין ממונות לא בעין דריש וחקירה כדי שלא תגעול דלת בפני לויין.

(סנהדרין ל"ב)

הטור כתוב ואם ב"ד אלם ואיינו יכול להוציא ממנו בדיין ישראל יען שאינו רוצה לבא לפניו לדין יטול רשות מב"ד ומציל את שלו מב"ד בדייני עכו"ם והוא מהגמרא ב"ק צ"ב.

אמר ליה רבא בר מריה נודה רבעא שדי עלייה אמר ליה יען קריית חברך ולא ענק רמייא נודה רבא שדי עלייה אמר ליה יען טהרתויך ולא טהרתו מטומאתך לא טהורי עוד. (ח"ט ס' כ"ז)

הרשכ' א' בתשובה כתוב לעניין דין אמלכותא דין דע שלא אמרו אלא بماי דאיכא הורמן אמלכא ובבדברים שהם מדיני המלכות כי כמו שיש לנו משפטינו מלוכה כמו שאמר שמואל לישראל כך בשאר עכו"ם דין ידועים יש למלכות ועליהם אמרו דין אבל דין שדניון בערכאות אין אלו משפטי המלכות אלא הערכאות דין לעצם כמו שנכתב בספר הדינים שלהם שם אי אתה אומר כן בטלת ח"ז דין ישראל.

מי שהגד בערכאות של עכו"ם ונתחייב בדייניהם ואח"כ חור גلتובע ותבעו לפני הדייני ישראל י"א שאין נזקון לו ויש אומרים

## CHAPTER XXXIX.

### הלוואות

#### IT IS PERMISSIBLE TO SCRIBE A NOTE TO THE BORROWER IN THE ABSENCE OF THE LENDER.

1. If A borrows money from B and he is unable to pay, and if A has real estate, the money can be recovered by B whether the debt is oral or in the form of a note (B. B. 175).

2. If the borrower sold the real property after the loan was made, then an oral debt cannot be recovered from the vendees, but a note obligation can be recovered from the vendees of the real property, even though it is not specified in the note that the vendees should be responsible, nevertheless the lender can recover from them, because the failure to specify the responsible in the note is due to the mistake of the scribe of the note (B. M. 14).

3. If the witness testifies that they took a form of agreement (Kinion) from the borrower at the time of the making of the loan even an oral debt can be recovered against conveyed property (B. B. 40).

4. If a man loaned money to another in the presence of a witness, it is not permissible for the witness to make memorandum in a note form of the loan and give it to the Lender without the permission of the borrower (Kesuboth 55).

5. If prior to the making of the loan was a kinion, made showing that the borrower owed the lender 100 zus, it is permissible to write a memorandum of that loan without the permission of the borrower, because after every kinion, a note can be written (L. c.).

6. Even a long time after the loan is made the lender can demand of the witness the note or memorandum and his request must be fulfilled and the borrower can not be believed when he says that he paid the debt. The date of the form of the agreement (kinion) must be written in the note or the witness can write the present day and must specify that the note is written at a later time (B. B. 172).

7. Even if the borrower dies before the note is written or even if the borrower promises to pay on a certain day and that day has passed, the note can be written after his death.

8. The same rule applies if the lender is dead and the heirs demand from the witnesses the memorandum note, their request must be fulfilled (Tur.).

9. Other authorities hold that if the lapse of thirty days is passing or the due date pass, the note cannot be written without the consent of the borrower, because if he were alive he might plead that he paid it (Ron.).

10. If the borrower protests against the wit-

nesses's writing a note, some authorities hold that even if the witnesses receive a form of agreement (Kinion), the note cannot be written (Tur.).

11. If the lender says, "If you refuse to write a note of my debt, I wish my money returned to me," his demand is binding (Tur.).

12. If the witness desires to go across seas, some authorities hold that the lender can come before a Court and they will receive the testimony of the witness and they will write a note. But the witness himself is forbidden to write the note.

13. Another authority holds that the protest of the borrower is invalid and the note must be written even against his will, even the witness do not go across seas (Ramban).

14. It is not necessary that witnesses be invited for that testimony, even if the witnesses were uninvited, they can write the memorandum note consideration. If, however, the borrower invites two witnesses to witness a loan, other witnesses are forbidden to write the memorandum note, because it is possible that two notes will be made for one loan (Rasbo).

15. It is permissible to write a note for the borrower even in the absence of the lender (B. B. 167). If, however, the lender is present and protests, it cannot be written (Ramo).

16. It is forbidden to write a note for the lender

in the absence of a borrower even if the lender instructs the witness to write and sign the note, and to keep it in their possession until the borrower will come and permit the note to be delivered to the lender; should he fail to call for it, the note shall be destroyed, his request shall not be considered (Tur.).

17. If one obligated himself with a form of an agreement to two persons that he will be bound to pay a certain sum, and he commands the witnesses that they shall write a note and give it to one of them and they fulfilled his request and delivered the note to one of them even though the other does not know of the delivery of the note or in case he dies and does not know of the note, he is nevertheless entitled to his share and his heirs can recover one-half of the obligation (Tur.).

18. If witnesses see that a form of an agreement is entered into before the loan is made and that the borrower was at that time a minor, the note cannot be written (Beth Joseph).

19. If the borrower comes before the Court with the note in his hand to compel the lender to lend him money until the due date of the promise, even if it is approved that the note was written with the consent of the lender, the lender can withdraw his promise (Kidushin 47).

20. If, however, the lender promised to loan

money on a pledge and the lender made some manner of settlement in reference to the pledge, then the lender must loan the money (Rasbo).

21. The fee for writing the note must be paid by the borrower, even though the money was used for business purposes and even though part of the profit belongs to the lender (B. B. 167).

22. If, however, the lender loses the note and demands another note of the witnesses, the lender must pay for writing the same (Ramo).

#### CHAPTER XL.

1. If a man obligated himself upon a bond to pay money to another, he is bound to pay even though he did not borrow the money. This obligation must be made before witnesses, or if the obligor write with his own hand that he owes 100 zus to B. Even if it is not signed by witnesses, he is bound to pay, because he obligates himself like a surety man is bond and the same rule applies if a lender writes a receipt in payment of a debt. That is a good legal release even if he did not receive any money (B. B. 149).

2. If the borrower writes a note in his own handwriting, and the note is signed and delivered by witness to the lender, it is valid, and from the date of the note can be recovered even against conveyed property. The writing must be in good condition, so that

no forgery can be spelled out and the witness must read the note before they deliver it to the lender.

3. Some authorities hold that the lender must direct the witnesses to sign a separate note stating that a date note was delivered in their presence.

## CHAPTER XLI.

### IF A NOTE IS LOST OR BLURRED.

1. If a note by the lender becomes marred or blurred, then the lender must submit it as evidence and he and the witness can come before the Court, where they acknowledge the signatures and write a new duplicate note. The new note must be written in this form, to wit: That so-and-so lender presented before us, so-and-so Judges, a blurred note with the witness so-and-so, dated so-and-so, and we examined the testimony of the witness and is found correct, then the note can be valid, and can be collected without another acknowledgement (B. B. 168).

2. If, however, it is not written in that form it must be proved by other witness or evidence of the testimony of the witness written in the note if that is correct.

3. Some authorities hold that the blurred note must be destroyed and the destruction must be specified in the new note (Tur.).

4. The witness without the permission of the Court is forbidden to write a new note.

5. If, however, it is found that the note was blurred intentionally, or he left it in an unsafe place and it became blurred, then a duplicate one cannot be made, because it is evidence that the party did not care to keep the note in a safe place, it is understood that the note is paid, therefore, without the consent of the borrower a new note cannot be duplicated (Tur.).

6. If the lender came before the Court and demanded a duplicate, because he lost the original, even he present the same witness of the loan, and they testified that the note was given to him, no duplicate can be given to him except when the Court sees the great reason, such as the note becoming blurred, or witness testify that the note was burned, then the Court can order a duplicate (L. c.).

7. If the note was deposited by a bailee, and got lost by the bailee, then a duplicate can be written, because it is sure that the lender cannot find the first one, because it was not lost in his possession (Tur.).

8. If the borrower is abroad the sea, and the lender fears to carry the note with him abroad the sea, because it can be lost, then he can come before the court and they give him a duplicate and the lender deposits the note by the court in this city and when

he will collect by the borrower the debt, the court of the borrower must notify to the court of the place of the lender to destroy the first note.

9. If on the way to the borrower the lender lost the duplicate, and it is proved by witness that it is true, then the lender can demand of the court to return to him the original note (Tur.).

10. If R has a note of B and the note was lost and the witness exists, and make a form of agreement at the time the loan was made, and B claimed that the note is paid, even the loan was made on a certain length of time, and the time is not due, B must take an oath and is believed (B. B. 168).

11. Even the note is found by another party and the borrower claimed that he paid the note and the lender returned to him the same and he lost it and the other party found it, the borrower is believed. But he must receive on oath (Hises) (L. c.).

12. If, however, the lender deposits the note by another party, then the borrower is not believed to plead that he paid and he lost the note (Tur.).

13. If the lender was in a city that was captured during time of war, and the lender demanded a duplicate on account of losing the original, he can be believed, and a duplicate must be made (Ramo).

## CHAPTER XLII.

## A NOTE CAN BE WRITTEN IN ANY LANGUAGE.

1. It is forbidden to write a note on such paper that can be erased. If, however, he wrote a note on such paper, it cannot be collected even in a short time after the loan is made (*Gitin* 22).
2. The note can be written in all kinds of hand-writing and in any language (*L. c.*).
3. If it is written on the top of the note the sum of 100 zus and at the bottom is written the sum of 200 zus or vice versa it must be decided at the sum written at the bottom (*B. B.* 167).
4. However, if on top is written so many sums and on the bottom is written the total, and it was found that it does not tally, then it must be decided on the amount written on the top, as it is understood that the total was made in error (*Tur.*).
5. If it is written on the note that R borrowed dollars from B, but does not specify how many dollars, the lender claimed that it was \$5.00 and the borrower claimed that it was only \$2.00, then the borrower must pay \$2.00 and receive an oath of the balance (*B. M.* 4). If the lender seized of the borrower \$5,\* it cannot be recovered from him.

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\*Not in the presence of witnesses.

6. If a lender presented a note for collection, and it is written on the note "denarin," or "sloem" and it is uncertain which coin from which country it was. If the note is written in Babolin, then the borrower must pay with the coin of Babolin, and if it is written in Palestine, then the borrower must pay with the coin of Palestine (Kesuboth 110).

7. If the place where the note is made is not specified, then if the collection of the note is made in Bovel, it must be paid with the coin of Bovel, and if he presents it for collection in Palestine, it must be paid with the coin of Palestine.

8. If the note contained some amount and it is uncertain what the amount is, whether "sloem" or "denarin" or "perutes," then it must be decided according to the custom of coin which takes place in the market (Tur.).

9. If in the note is written 100 silver and it is uncertain what money, either sloem, or pundinim, the borrower can pay with any coin he wishes, provided the two coins take place in the market equally (Kesuboth 110).

## CHAPTER XLIII.

### THE DATE MUST BE WRITTEN ON A NOTE.

1. The date must be written on a note, because if the borrower will be unable to pay the note, and sold real property afterwards, then the lender can collect from the vendee, and if the vendee bought the real property before the loan is made, it cannot be collected. Therefore the date when the loan is made is necessary to be written, so the court shall know of which vendee he is entitled to take action (B. M. 7).

2. If there is no date on the note, then the lender cannot collect the debt from any vendee, because every one can claim they bought before the loan was made, but he is entitled to collect from unsold property.

3. If it is written on the note Wednesday in that week and the 23rd of the month, and it is found that the day was 22nd of that month, the note is valid, and the mistake must be corrected (Tur.).

4. If the borrower writes with his own handwriting the note without a witness's signature and no date appears, it is valid, because such note cannot be collected from conveyed property, but from unsold property (Rasbo).

5. If a note is dated intentionally with a date

previous to when it was made, the note cannot be collected even from the borrower's free unsold property, because it is a false note.

6. If, however, the date of the note is written by mistake, then it can be collected from the borrower's unsold property (B. M. 72).

7. If however the date of the note is written later than the loan is made, then the note is valid (L. c.).

8. If a deed on a field is given to another as a gift and was written: e. g. May 6th, year 1916, the father-in-law gives a gift to his son-in-law, a field, and it is found that on that date the latter was not his son-in-law, but became his son-in-law afterward. Even if the deed was signed by learned men, then the document is invalid (Rasbo).

9. If the witnesses are alive and no other signature can be found to be compared to their signatures, they have the right to issue another gift document from the present date; however, if another signature can be found to be compared to their signature they have no right to issue another gift document, but the receiver of the gift is believed, by saying that the date was written by mistake, on account of "miggy," because he can say that the form of the agreement was made one year previous. Therefore, he is believed that the date was written as a mistake and the gift document is valid from the present date (L. c.).

10. If of that previous dated note a remark is made before the signature of the witness, in this form, "this note is written on this date and signed on a later date," then the note is valid (Mamanide).

11. Even the witness sees that the loan is made and the borrower commands them to write and sign a note and give it to the lender, if there was no form of agreement at the time, when the loan is made, then the date of the delivery of the note must be written in the note, not the date when the loan is made (Beth Joseph).

12. If a note is dated for Saturday or for the 10th of Tishri (Day of Atonement), it is understood that it is written a day later than the loan is made, because it is impossible that the writer should write a note on Saturday or the day of Atonement. Therefore, it is valid (B. B. 171).

13. If, however, the borrower claims that the lender shall receive an oath that the note is unpaid, his request must be fulfilled (L. c.).

14. R and B each one have a note of C, and in R's note is written the date of the 5th of Nison, and in B's note is written Nison, without specifying what day, and C has only one field thereby, being able to collect enough money to pay only one debt, the law so states that whose note dates previous he is entitled to collect first. Therefore, R is entitled to collect his

debt because his note bears the date and maybe he is previous to B's note. And B cannot collect from the vendee what they bought from C, even if they bought in the month of Aiir, because the vendee can claim, maybe your loan was made the first of Nison and you are entitled to collect from the one field which is left free in the hands of C, and R collected illegally, because you were the first. Therefore, if R and B will write to each other a power of attorney, they can collect it from the vendee, who bought the property from C after the month of Aiir, because each can say, if I am the second I am entitled to collect from you for my debt, and if not I am entitled to collect for the other (Kesuboth 94).

15. If one presented a receipt of a note is not written the name of the witness on the note, and not the date, but the amount of the money received is equal to the amount of the note, the receipt is valid (Rochs).

16. If two notes are made in a leap year one is written Ador, without specifying the 1st or the 2nd, and in the other note is written Ador 2nd, and the borrower is able to pay only one, then the holder of the note in which is written Ador, without specified day, he is entitled to collect previous (Nadrim, 61).

## CHAPTER XLIV.

### THE CONTENTS OF THE NOTE MUST BE REWRITTEN ON THE LAST LINE.

(1) The contents of the note must be rewritten on the last line and if it is not rewritten the note is not void, because no lesson is taken from the last line.

(2) If erased words are found in a note or inserted words, it must be so mentioned before the last line of the note, otherwise it is illegal and no lesson can be taken from it, but the note is not voided thereby. If, however, the words erased are the name of the borrower or the lender, or the date of the note they were not mentioned before the last line, the note is void.

If erasures are found in a note on the face or on the back or between the lines on the reverse side, or on the front, there are two opinions, one holding that the note is valid and the other holding that the note is void.

## CHAPTER XLV.

### A WITNESS MUST READ THE DOCUMENT BEFORE HE SIGNS IT.

1. A witness must sign the document at the bottom (Gittin 87).

2. If the head of the court who knows all the contents of the documents and his private secretary reads it before him, and he believes him, the head of the court of that ground can sign the document without reading it himself (Gittin 19).

3. If a witness cannot sign his name, if it is permitted for another to write his name with a pin or scissors and the witness will fill in the design with ink and can be accepted as witness, it is two opinions.

4. But to cut out on another paper with a scissors the names of the witnesses and put on the document and the witness shall fill it in with ink, it is disputed whether it is valid or not (Gittin 19).

5. A witness who cannot sign his name if he can give the pen to the city clerk he shall sign for him, if it is a custom in the locality to do so it is valid (Rabiny Yeruchom).

6. The witness must sign his name just below the writing; if it is signed two or three lines below the writing it is not effective, because some forgery can be added (B. B. 162).

7. Every note that comes before the court and witness testify that it is the signature of this witness, the note is valid, because we know surely the witness will not sign until they read the document and they know how to sign, in case the witness are present,

and it is found that they cannot read, and they say we gave it to another to read, it is valid, if he does not say so, then the witness can be reexamined, and if they are found correct by examination, it is valid.

8. If the writing of the note is on rough paper and the witness on clean paper, or vice versa, the document is invalid, for they both must be on clean paper (B. B. 164).

## CHAPTER XLVI.

### THE WITNESS TESTIFY THAT THEY WERE MINORS OR INCOMPETENT OR THE NOTE WAS TRUSTWORTHY.

1. If a lender presented a note before the court for collection and the borrower claims that the note is false and never did I command to write them, or he pleaded that I commanded to write the note and gave it to the lender and paid the note and he returned to me and I lost it and the lender found it, or he pleaded that it was a trust note, i. e., such as if a man wishes to receive a large credit he is given a trust note by friend to enable him to make looking like a rich man, or the borrower said that I make ready the note for a loan and I did not loan it and I lost the note and he, lender, found it, he is believed on account of migy (Kesuboth 19).

2. If, however, the lender acknowledged the note

according to the law before the court, then the note can be collected (L. C.).

3. Five different directions the note can be acknowledged.

1st. If the judge recognizes the signatures of the witness.

2nd. If the witness signs in the presence of the judge.

3rd. The witness shall come before the court and state that is their handwriting.

4th. Other witnesses can testify that is their handwriting.

5th. If the witness signed another paper and this signature can be compared to the signature of the note.

4. The acknowledgment of a note must be before three judges, in the day time, not during the night.

5. The acknowledgment can be valid even in the absence of the borrower, and even if the borrower is present and he protested because he pleaded that the note is false, his protest is not taken into consideration.

If a man signed on a note and afterward he becomes a robber and cannot act as witness he is not believed to acknowledge his signature (see para-

graph 3), if other witness saw his signature before he became a robber they can acknowledge the signature, or the robber shall sign another paper before the court and the same can be compared to the signature of the note (B. B. 159).

6. If a man signed a note and afterward he became a son-in-law to one of the parties, he cannot acknowledge his signature on account of relation, nor other witnesses, even these witnesses saw his writing after he became a son-in-law they can acknowledge the signature (L. c.).

7. If a man signed on a note and afterward he became dumb so other witness must acknowledge their signature (Tur.).

8. If two witness signed on a note and they died, and there is no other writing to compare to this signature, and other witnesses come and testify that is the handwriting of the witness nor they were minors or incompetent as witnesses they are believed on account of migy and the note must be destroyed (Kesuboth 19).

9. If the lender can find another different direction for acknowledgement of the note, then they are not believed and the note must not be destroyed.

10. If the witness is alive and the other witness testify that they were minors or incompetent when

they signed and even there is other writing possible to find to compare to the signature, the note is void (Ramo).

11. If witness claimed that it is our signature only we were forced under duress or were minors at the same time or incompetent at the same time when we signed. If there is no other signature to compare to that signature, they are believed (L. c. 18).

11a. If, however, the witnesses say that they were forced by money risk or the note was a trust, they are not believe because a man cannot make himself as wicked (L. c.).

12. If the witness who signed on the note say that the borrower was a minor at the time when the loan was made their testimony cannot be believed, because a man is not believed to make himself wicked and is forbidden to sign on such note when the borrower is a minor (B. B. 155).

## CHAPTER XLVII.

(1) If the lender said that the note was paid or that was a trust note, or the borrower made ready for a loan and changed his mind and did not lend it, and the same lender owes money to another person and there is nothing to collect from him except from that note, and the note is acknowledged by the court or

the note is deposited by bailee, the lender is not believed.

(2) Even with the admission he damage himself, for instance, that the note is 200 zus and he only owes 100 zus he is not believed (*Kesuboth* 19).

(3) If afterward when he settled with his lender, he came to collect from the borrower, and he pleaded, therefore I said before that the note was paid, because I wanted to hide myself from my lender. If this was said in the presence of the lender, he can collect the note, if it was said not in the presence of the lender it cannot be collected (L. c.).

(4) If the lender claimed that the borrower commanded to write on the note 1,000 zus and he only borrowed 500 zus and he believed me that I will not demand from him only the 500 zus, and the borrower claim that the note is false, the note is valid (*Rochs*).

(5) If, however, the borrower command to write in the note 500 zus, and the witness made a mistake and wrote 1,000 zus the note is void, even it is written inside believing, and the borrower must take an oath and he is free from payment (L. c.).

## CHAPTER XLVIII.

(1) The note writer is permitted to write the form of the note likely, the names of the lender and

the borrower and the amount of the money, and must leave a place for the date, and it must not be written before the loan is made (Gitin 26).

(2) If a note is written on a loan and the loan is paid, this note is incompetent to borrower with it another loan, even it is the same day, because the obligation of this note is released, and even a part of the note is paid the same part cannot be borrowed on the note (B. M. 17).

## CHAPTER XLIX.

### THE WITNESS MUST KNOW THE NAMES OF THE LENDER AND THE BORROWER.

(1) The witness must know the names of the borrower so and so, and if it is a deed must know the name of the vendor. In a release must know the name of the borrower and name of the lender (B. B. 167).

(2) If a person lives in a locality 30 days and he is called by a certain name then it is believed that the name is really his (L. c.).

(3) If a man called by a name and he answers the call even he is not in the locality 30 days, and the case is in his liability, this can be taken as evidence to bind him (L. c.).

## CHAPTER L.

### IF IN A NOTE IS WRITTEN I BORROW MONEY FROM BEARER.

(1) A note signed by a witness and it is written in I so and so borrowed 100 zus from you, anybody who brings the note can collect it (B. B. 172).

(2) If, however, no witnesses have signed in it, only the borrower's handwriting, and he plead I did not borrow from you, I borrowed from another and he lose and you found the same he is believed, on account of migy, because he can say that I did borrow and pay already.

(3) If a receipt is presented by anyone of their note, then the note is void, and nobody can collect with the same (L. c.).

## CHAPTER LI.

(1) If a note signed by one witness, and the borrower claimed that he paid the note, it is two opinions whether he is believed or not, some opinions hold that the borrower must pay the note, but he can demand a oath from his lender that he did not receive payment for that note, the other opinion hold that the borrower is believed, but he must take an oath (B. B. 33).

(2) If a note is signed by two witnesses and it is found that one is a relative, or ineligible as witness, and even two legal witnesses was present by the delivery of the note to the lender, the note is void; another opinion holds that the same rule applies as if one witness is signed on the note (Sanhadrin 28).

(3) In a will it is found that one witness of the signer was a relative or incompetent, if the competent one remembered the transaction, he can come before the court and testify it, and if there is another one who heard the transaction of the will, he can be combined with the first one, even if the other was not appointed before, to act as witness. His testimony can be taken under consideration (Tur).

(4) If one man wrote a will for two persons in one document and the witness is related to one of the receivers of the gift and strangers to the other receiver, the document is void, because there is one transaction in the same witness.

(5) If, however, it is written in the will that he assigns this one field to one man, and the other field to another man, and afterward it is found that the witness is related to one and strangers to the other; to the one that is related the will is void and to the stranger it is valid, because it is a different transaction of witness, even though it was written in one document (L. c.).

(6) If a note is delivered in the presence of witnesses and not signed by them, it can be collected from conveyed property (Gitin 86).

(7) If, however, it is signed by incompetent or relative witnesses the note is void, because it is false (Sanhadrin 28).

## CHAPTER LII.

(1) If a note is written, A. borrowed 100 zus from B. for a year's time and agreed to pay the usury for that time 6 zus then B. can collect the 100 zus and not the 6 zus. If, however, they combined the usury together with the bond and wrote that the borrowers owes 106 zus, then as punishment B cannot collect anything, because it is forbidden by us to receive or give usury (B. K. 30; B. M. 72).

(2) If the borrower admitted the loan it is two opinions if he must pay the 100 zus.

(3) If the loan is made through an agent and the agent combine in the note the usury with the fund together, then the lender can collect the fund because he can claim that it was written without his consent.

(4) If the lender presents a note to the court for collection, and it is torn, and the borrower claimed that it is paid, and therefore he tore it. If the note

is torn in the place of the witness and the date, it is void; if, however, it is recognized that the note is torn due to the fold therein, the note can be collected (B. B. 168).

(5) When the note becomes blurred and the writing is visible the note is valid, if not, same is void (L. c.).

6) When a note becomes spoiled by rats or moths, and, if the name of the lender and the borrower and the amount of the money is left so that it can be read, the note is valid (Tur).

## CHAPTER LIII.

### A NOTE CANNOT BE REVISED.

(1) If a lender has one note of the borrower for amount 100 zus and the lender demanded that same should be revised for two notes each one for 50 zus, or vice versa, he has two notes for 50 zus each and demands one note for 100 zus, this cannot be done without the consent of the borrower (B. B. 172).

(2) Even he has a note for 100 zus and demand a note only for 50 zus it cannot be done without the consent of the borrower, because maybe the borrower paid the 100 zus note and the lender gave him a receipt, and, therefore, he wants to exchange the note for 50 zus because afterward he will plead that it is another debt, and will be able to collect again (L. c.).

## CHAPTER LIV.

## THE LAW OF CONDITION PROMISES.

(1) If a borrower paid a part of a note, if the lender wants he can come before the court and they will give him another note of the balance with the same date of the first note. But the witness signed the first note is forbidden by the law to write a note for the balance (B. B. 170).

(2) And if the lender wants he can write a receipt for the part money paid on account of the note. The scribe fees belong to the lender to pay (Ramo).

(3) If it is an oral debt and the borrower paid a part of them the scribe fees belongs to the borrower to pay (L. c.).

(4) If the borrower wishes to pay the debt and demands for the return of the note and the lender claims that he lost the same, the borrower cannot refuse payment of the note on account of that, only he must receive a receipt for his money, and must pay the note (B. B. 171).

(5) The borrower can put a ban of them who hide the note and refuse to return (Tur).

(6) If the borrower claimed surely the lender has the note in his possession then the lender must receive an oath (hises) that he lost the note and the borrower must pay by receiving a receipt (Tur).

(7) If the lender claims the note is not yet in my hand and he lays in another city and I will write to you a receipt until I will get the note, some opinions hold that the borrower can refuse payment until the note is returned to him, because so long as the note is in existence it must be returned (Tur).

(8) Forfeit of the law. If the lender has the note and refuses to return it he is not entitled to get paid until he returns the note (Ramo).

(9) If the lender said, pay first the money and afterward I will return to you the note, and the borrower said, return the note and afterward I will pay the money, the right is with the borrower (L. c.). If they do not trust one another, the note must be deposited by a third party until the lender will receive the cash and afterward he will return the note (L. c.).

(10) The form of the receipt on a note must carry the date of the note, *i. e.*, such and such note and such and such date I received the amount, if it is not remembered, the date of the note can be written on the receipt so; on the note containing such and such sum received so much, and no date shall be written on the receipt, because maybe they wrote the date of the note later than the loan is made, and the date of the receipt will be before the date of the note, and afterward the lender will say, that it is another debt, and will be able to collect; therefore no date shall be written (B. B. 171).

(11) If in a receipt is written that so and so paid to so and so, without mentioning any sum, all the notes of the lender of that borrower cannot be collected (*Tur*).

(12) If the borrower had witnesses that the lender has his paid note in his possession, and not return it, and the lender came to collect two notes, one is for 200 zus, and the other is 100 zus, then the 100 zus can be collected, not the 200 zus, because the borrower can claim that the 200 zus is the paid note (*Ramo*; see Chapter 65).

## CHAPTER LV.

### THE LAW OF PROMISES.

(1) If a borrower paid a part of a debt and promised to pay the balance in a certain length of time, and deposited the note with a bailee, and made on condition, "If I will fail to give you the balance of the debt in that certain day, the bailee shall have the right to return the note to the lender and shall have the same right to collect the full amount from me," and when the time has come and the borrower has failed to pay the balance, it is forbidden to the bailee to return the note to the lender, because the borrower did not promise to give the money as a gift, but only that he thought that he would be able to pay and by the end he is not able to do so, therefore his

obligation cannot be taken into consideration (B. B. 168).

(2) If at the time of the promises was made a form of agreement, of the borrower, before contempt of judges, then the bailee can return the note to the lender (Nedorim 27).

(3) If, however, he failed to attend the promises, on account of accident, for instance, the borrower promised he will come in a certain day and pay the balance and the day is over and he failed to come on account of illness or on account of overflow of the river, then the bailee shall not give the note to the lender (L. c.).

This law applies only when the borrower says if I not come on the certain day of time the part money shall be as a gift *given* and the note shall be left in his power.

If, however, the money was given for a part payment of the note, the note lost his obligation and can not be collected from conveyed property only from unsold property (Tur).

## CHAPTER LVI.

### THE LAW OF BAILEES.

(1) The bailee so long as the deposited articles are in his possession, and are claimed by two parties,

he is believed like two witnesses, without oath, even he is a relative of the parties (Giten 64).

(2) Even if the time of the returning the deposit is past, but he did not return it as yet, as bailee he is believed to say on what conditions the article was deposited (Tur).

(3) Even if one of the parties denies the appointment of the bailee, the bailee is believed as to his appointment (L. c.).

(4) And even if both parties deny the appointment of the bailee so long as there is no claim about the sum, or the value of the articles intrusted to him, the bailee is believed as to his appointment and as to the condition upon which it was deposited.

(5) If, however, there is a misunderstanding between the bailee and the two depositors as to the amount of the money, then the bailee is not believed because he has an interest in the subject matter, and an interested witness is not believed, when he has no migy (Ramo).

(6) If a promissory note is in the hand of a bailee and he showed the note to the court, and the bailee claims that it is paid. Even the note is acknowledged by the court, he is believed, because if he would cause the lender damage, he could burn or tear the note (Sanhadrin 31).

(7) The same law applies if the bailee died and it is found a memorandum in writing in his possession that the note is paid; even no witness signed on it. The note cannot be collected (B. M. 20).

(8) If such a receipt is found in possession of the lender, even in his handwriting, the note can be collected because he maybe made ready the receipt to give it to the borrower when he will pay and he failed to pay (L. c.).

(9) If the witness contradict the bailee and testify that his appointment was on a condition and this is not fulfilled. Even the bailee has a migy, the witness is believed (Tur).

(10) If, however, the witness contradicts the bailee in a different way; for instance, the witness testify of the condition was deposit, the articles, and the bailee claim of other conditions. Then the bailee is believed because it can be, in the presence of the witness was deposit of the condition, and afterward the two parties come and change the conditions. And even the bailee does not plead so, the court must plead for him, because shall he not be contradicted of the witness (L. c.).

(11) By the return of the deposit articles, to the depositors, must be made before the court, and they must explain the law of the bailee, and the power of the believing so long as it is in his possession, he is

believe like two witnesses, and afterwards when it is returned he is only believed like one witness. Because maybe some argument will come between the parties. Therefore the court must sign a note by the return of the deposit articles (Tur).

(12) If a note is deposited by bailee and the borrower claim that it is false or it is paid and the note cannot be acknowledged even if the bailee testify that the lender and the borrower deliver to him the note and they state that so much is unpaid he is not believed, and if the bailee is competent as witness, the borrower must take an oath to contradict the bailee (Tur).

12a. If a note is deposited by the bailee because the borrower promised to pay on a certain day and the day is past and the borrower claim that he pay, or the borrower died, it is believed that he did not pay because when the lender received payment he should notify the bailee, and the note must be returned to the lender (Tur).

(13) If a borrower died then the note cannot be collected without taking an oath like the law of collections from orphans (see Chapter 108, L. c.).

(14) If a man obligate himself to another with a form of agreement that he owes 100 zus to him and the witness writes the note and delivers same to the obligor, and he deposits the note to a bailee, and

afterwards the obligor died, the note cannot be returned either to the lender or the heirs of the borrower until it will be proved to whom this belonged, because it can be, or he loaned it, and paid, or not loaned it either, only he wrote a note to have ready for a loan and not lend it (Tur).

(15) If a bailee was appointed by an agent, *e. g.*, the borrower comes with another and pledges, in his hand, and he says the lender made me as an agent to deliver to you the pledge on the stated conditions, and the bailee received the pledge and afterwards the lender comes and contradicts the agent and claims that he never did appoint him as an agent for that purpose. The bailee must do everything which is commanded by the agent (Tur).

(16) A widow which is active in her husband's business or guardian appointed by the owner, and the owner died, and they knew that it was in the possession of the deceased, the articles belonged to others and they knew to whom it belonged; they bond to return to each one his article and if they did not return same and the other comes to court for collection they are believed account of migy, because it was in their power to return self (Rochs).

## CHAPTER LVII.

## THE LAW OF A PAY NOTE.

(1) It is forbidden to the lender to keep a paid note in his possession and if he refused to return the note after it is paid, the court can put a boycott on him until he returns it and it is forbidden to keep the note for the scribe fees (*Kesuboth* 19).

(2) If, however, the note contained the sum of 100 zus and it is paid of them 50 zus, then a separate receipt must be written, or the receiving sum can be put on the back of the note and then he is permitted to keep the note (*B. Y.*).

(3) A note which is paid is forbidden to be used again (*B. M.* 17).

(4) If the borrower claims that he paid the note and the lender answered, yes, you pay me, or, I returned the money to you, the note becomes void, because the lender admitted that the note lost its obligation and cannot be collected with the same.

(5) If, however, the lender say that he return the money on account they were counterfeit and shall be exchanged for a good one, then the note is in his power and can be collected with the same (*B. B.* 32).

## CHAPTER LVIII.

## IF A LENDER PRESENTED AN ACKNOWLEDGED NOTE FOR COLLECTION.

(1) If a lender presented an acknowledged note for collection and the borrower claimed that same was paid, and the lender said it is true that you paid me, but I have another oral debt of you, and I received the money on account of the oral debt, and the note stood in his power. If the money was not given before witnesses, he is believed, and the note can be collected without an oath. If it is written in the note believing (Schvaus 42).

(2) If afterward the borrower will claim of the lender that he took of him money not in a legal way, then the lender must take an oath (Heises) and can be free of liability.

(3) If it is not written believing in the note, then the lender must swear and afterward can be collected (Tur).

(4) If the borrower sends the money through a messenger, either he said to him, take the note first and after give the money, or, he said, give the money and after take the note, the agent is liable to pay the money to the borrower (Kesuboth 85).

(5) If, however, the borrower did not remember

mentioning to the agent about the note, he is free of liability, because he was not instructed to give him the money before witnesses (L. c.).

(6) If the borrower pleads that I paid you, before such and such witness, and the witness comes and testifies that they saw the money was given, but was not reminded about the note, and the lender said, you was to pay me for another debt, then the note is void (L. c.).

(7) It is an opinion that if the lender seized the money, mentioned in said note by the borrower, it cannot be recovered from him.

(8) This rule applies only when the witness testified that he gave the money in payment of the note; if, however, they saw the money was given and did not know for what purpose, either for payment or for storage, or for a gift. If the lender said that no money was given, then he is considered as a liar and loses his trust, and the note becomes void. If, however, he pleads that it was given in payment for another debt, he is believed, and can collect the amount of the note with an oath, because he did not pay him before a witness, and the lender can say that it was received as a gift, therefore he is believed to say, that same was for another debt (Schvaus 34).

(9) If the borrower said this note was for the ox that I bought from you, and you collect the money

from his flesh, and the lender said yes, that I collected money from the flesh of the ox, but I received the money for another debt that you owe me. The note is void, and cannot be collected because the lender admitted that the loan was for the ox and he became paid from the flesh of the ox, that is understood that was for the debt (L. c. 42).

(10) If a lender demands two equal debts from the borrower, and the borrower paid for one without specifying for which one, it is permitted by the lender to say that he received the money and applied it for which debt he liked (Kidushin 13).

(11) Even the borrower, by the payment, said here is the money for that debt, and the lender received the money silently, afterward the lender can say that he received the money for an oral debt (L. c.).

(12) If the borrower sent money through the lender for another lender, it is permitted for that lender to attach the money for his debt (L. c.).

## CHAPTER LIX.

(1) If a lender brought an acknowledged note for collection and the borrower pleads that it was paid, and the lender is uncertain about the payment, the note cannot be collected (Tur).

(2) If afterward the lender called again, and said, I looked over my records, and I found out that the note was positively not paid, then he can collect the payment for the note (N. T.).

## CHAPTER LX.

### LAW GOVERNING PROPERTY SOLD, NOT YET IN ONE'S POSSESSION.

(1) If a lender presented a note for collection and the borrower does not find enough money to cover the sum of the note, then, if the borrower sold or made a gift to another of real property, after the loan is made, the lender can collect from the borrower.

(2) But personal property, if it is in the possession of the borrower, can be collected (B. M. 14).

(3) If, however, the personal property is sold, or was given as a gift, to another, even after the loan is made, the loan cannot be collected from the buyers on account of the protection of the market business, because no one would care to buy personal property (B. B. 44).

(4) If the borrower has a note on another and he sold or discounted the same, the lender can collect from the note. If the borrower sold or gave as a gift all his personal property without leaving anything for himself, it is understood that it is made

with the idea of bankruptcy and swindle, therefore the lender can collect from the sold personal property (see Chapter 99, Tur).

(5) If one obligates himself to another in a promise, that the cost is uncertain, even it was a (Kinnon) Mimemonad, hold that he is not obligated, and the other authorities stated that it can be obligated (Gitin 48).

(6) If one makes himself bound to support the other, and the promisor wants to give him food, and the receiver demands cash money, the rights are with the receiver.

If it was stipulated in the agreement that he must receive the support of his table, and the receiver refused to be supported from his table, then the donee can receive only the amount of the cost of living just as one of the members of the family, because it is more economical to provide for an entire family than to give individual board. If the promisor refuses to support the donee of his table, then he must give him the cost of his individual support.

(7) If the promisee takes sick and requires more expense for food, he is entitled only to such support as is required by a healthy person.

(8) If the promisor dies in the meanwhile, then the heirs must fulfill the promise.

(9) If a man sells or makes a gift of an article,

which does not exist in the world at the time the promise is made, even though the article comes into the world at a later time, the contract is void and everyone can withdraw from it, because a man cannot confirm to another an article which does not exist in the world at the time when he entered into the transaction, and even though it is in existence, but it is not in his possession, it cannot be transferred to anybody.

(10) The same law applies when a man sells or makes a gift of a calf, that is unborn, even though she is in the womb of the cow, the transaction is void (B. M. 33).

(10a) But a man can make himself bound to the other in a form of liability even if the article does not exist in the world or it is not in his possession.

(11) R presented a note for collection; the note stated that B borrowed money from C; R claims that the money belongs to him, and that C acted as his agent only and he made the note in his name, and C admitted the same. If C, with his admission, did not do any harm to another debtor, then B can be forced to pay to R the money, and C cannot release the debt to B.

(12) R loaned money to B and at the time of the loan R said to B to write the note in the name of C, but the note must be given to R, and when R came

to collect from B, B claimed that he is not his lender, the right is with R (B. K. 102).

(13) If R demanded that C shall write a bill of sale of the note in his name, C cannot be forced to do so.

(14) If, however, R stipulated with B at the time of the loan, that on that condition I loaned you the money, that if afterward I will demand a note in my name, then B can be forced to make a note in R's name.

(15) S was owed 100 zus to R and they settled by arbitration that S shall write a note for 20 zus in the name of L and be free, and afterward R wrote a release of all the claims to S, and S claimed of the 20 zus because L did not lend him the sum, only R, and the latter released him of all claims, and, therefore, the 20 zus is included in the same release. The right is with S (Rasbo).

(16) If a man lends money on a real pledge, and commands to write the note for the debt in the name of his minor son, and when the time of collection came, the borrower refused to pay the lender, and claimed that he is not his lender, the father has the right to collect his debt because he can act as guardian (Tur).

(17) A man died and left real property and the deeds and notes are written in both names, of the

husband and wife, and she claims that half of the real property belongs to her, that she bought it from the money that she inherited from her father. The right is with the woman. If the deeds are all written in her name, and she claims that all is hers, she is believed (L. c.)

## CHAPTER LXI.

The board of the City can make an enactment that no note can be valid without the handwriting of the City Clerk. However, the release of notes is valid, even if it is written in the handwriting of the lender (Tur).

(2) If it is found in the City Clerk's minutes that R owes 100 zus to S if it can be taken as evidence, and can be collected with these proofs, it is disputed, some authorities stating that it cannot be collected with this evidence, because it is like evidence in writing (see Chapter 28, Ramo).

(3) If a woman owes money and she is unable to pay, she must take the examination oath (supplementary proceedings) like a man, because the same law applies to man and woman alike in every punishment (Tur).

(4) If a note is made payable to bearer, without mentioning any name of the lender, when it becomes

due, it can be collected by anyone who presents the note, even without a power of attorney; but the holder of the note must have been born at the time the loan was made, because a man cannot be obligated to an unborn person (see Chapter 60).

(5) If a note is written that the lender made a condition with the borrower, should he fail to pay at the date of maturity, he can be fined to pay double the amount loaned, and the time of payment is past and he failed to pay, the fine money cannot be collected (Tur).

(6) A and B are in partnership in business, and they decided to dissolve same before an arbitration. A was the treasurer and they agreed that A should deposit with the arbitrator a \$1,000 note because the arbitrator of the other party found that the above-mentioned amount will be sufficient to cover all the claims, the business when settled will not yield more than that amount. After a reckoning was made it was found that A must give B \$600 out of the business as his share. This amount is good on the said note, even to be collected from sold property from the date said note was made out (Tur).

(7) If it appears in a note that the borrower gave permission to the lender that if he will fail to pay at the said time, to collect from his fortune either in his presence or in his absence without any trial or decision of the court, and without appraisal or

publication. That is not effective, because a man is forbidden to take a pledge for his debts, without the permission of the court.

(8) If, however, the lender cannot find a judge to give him a permit to take a pledge, then he can take the pledge alone, on account of self defense (see Chapter 4, Tur).

(9) R claimed that B admitted before witnesses that he owed to him 100 zus on a note, and the note was stolen from him and given to B and B answered that R never loaned him the amount, only C came to me with a pledge in his hand and demanded that, I shall write a note in your name that I owed you 100 zus, and afterward C came and returned the note to me, and I returned him the pledge. B is believed under an oath and the note cannot be collected.

(10) If the heirs of the borrower claim falsity of the note because it was not presented during the life of the father, and although the lender was in poor circumstances, and the note was not presented for collection, the note cannot become void on account of that grant, but the court must order a thorough cross examination to find out the reason why. If they find that there is fraud, they have a right to order that no judge in the world can try the case, and they can give this writing to the defendant (Tur).

(11) Any note that is several years old and was not presented for collection, the court must prove by extensive cross examination, the reason for same (Ramo).

(12) If a borrower paid the debt to the lender and the lender refused to return the note to him, he can be excommunicated until he returns it (Tur).

(13) If a husband claims that he was ignorant and did not understand the contents of the contract of marriage, and therefore wishes to be exempt from those obligations. His claims are not taken into consideration (Tur).

## CHAPTER LXII.

(1) A woman that is active in her husband's business and deeds to real property, notes of debts are written in her name, and she claims that they belong to her, which she bought with the money she inherited from her father, the burden of proof belongs to the woman (B. B. 52).

(2) The same rule applies if a father died and one of the brothers is active in the business and deeds or notes of debt are written in his name and he claims that it is from his money, that he inherited from his mother, or he found something or a gift was given to him, he must bring witness to prove the same.

(3) If that brother died and left heirs, the other brothers must prove by witness that it belonged to the business.

(4) If they were separated in the expenses of support and he claims that it is from the money he inherited from the mother's estate, then the brothers must prove by evidence even at the time he lives because he can say that he saved from his expenses (L. c.).

### CHAPTER LXIII.

(1) If a lender presents a note for collection, and two witnesses appear before the judge and testify that the lender asked them to commit a falsity, a note like that, even though the note is acknowledged by the court, cannot be collected, except when the same witness is in existence and they testify that they saw the loan made or other witness will testify that they saw the witness sign, or the witness testify that it is their signature; in that event it can be collected (Kesuboth 36).

(2) If, however, the witness stated that the lender asked him to make a false note without such stipulation, then all the notes that are presented by that lender cannot be collected (Tur).

## CHAPTER LXIV.

### THE BAILEE WISHES TO ATTACH THE NOTES OF THE BAILOR.

(1) If notes are deposited with bailee and the bailor died, and the bailee claimed that he seized the notes during the life of the bailor, for a pledge for his debts, that he owed him, if it can be proven by witnesses that the bailor demanded the notes from the bailee and he refused to return them to him, then the notes cannot be taken from him (Kesuboth 85).

(2) This law applies to the rules of the Rabincal that a debt of the father cannot be collected from orphans, only from real property. However, now by the enactment of the authorities that even from the personal property of orphans can be collected the debt of the father. Therefore, if a man left notes deposited by a bailee and the bailor died, and the bailee claimed that the bailor owed him a debt and he seized the notes for his debt, he can collect from them even though he was not seized during the life of the bailor (Rochs),

## CHAPTER LXV.

(1) If a bailee found in his possession a note and he did not know who deposited the said note, either

the lender or the borrower, or both deposited it, because one part of the note was paid, then the note cannot be collected, until the burden of proof will be decided, and if the bailee returned the note to the lender, he must return it to the bailee again (B. B. 20).

(1a) If it is a pledge real note and it is uncertain who deposited it with him, either the borrower or the lender, even if the latter possess it on the real property, then the said note must be left until the burden of proof will decide, and the real property must be returned to the first owner (Tur).

(2) If the lender and the borrower decide together to return the note to one of them, then it is disputed whether they are believed or not, on account of conspiracy (Tur).

(3) If the bailee died and the heirs claimed that their father loaned money to the lender and took the notes as a pledge, their claim is effective. If they do not claim so, the court cannot claim this plead for the heirs (Rochs).

(4) R died and there are found in his possession notes belonging to his sister, tied together, part of the notes are in her favor and a part for her liabilities, for instance, notes for her dowry, and it is written that she gave a field to her husband as a gift, and it may be that she wrote the gift note and changed her mind, the gift shall not be given to the husband, but

the notes must be returned either to her, or if she dies to her heirs, because it is proven that she deposed them because they are tied together with her notes (Rochs).

(5) If a note is found in the street, even if it is written in the believing of the lender and it is before the date of maturity, and even if it is not written that it can be collected from property sold, and the borrower admitted that it was not paid, and even if the borrower or the lender give some mark on the note, for instance, a hole is in that certain letter, the note cannot be returned to the lender, and not to the borrower, because the borrower maybe paid the note and wishes to make some conspiracy to collect from the buyers of the real property (B. M. 12).

(6) However, if it is specified in the note that it shall not be collected from sold property and the borrower admitted that the lender lost the note, the note can be returned to the lender (L. c.).

(7) If torn notes are found on the street and one of them is a good note, then it is circumstantial evidence that even the good note belongs to the borrower and he lost it; therefore, the same cannot be returned to anybody (B. M. 20).

(8) If a receipt is found with the torn notes, even if it is not signed by witness or by the lender himself, then the note can be returned to the borrower (L. c.).

(9) If the note is found in a vessel and it is not the custom to put notes in such vessels, therefore, whoever gives a mark of the vessel, must return the notes to him (L. c.).

(10) If three notes are found wrapped together or one is rolled around the other, then the finder must announce that he found notes and the loser will give a mark as to how many notes there were, and if he gives the correct mark, then the notes can be returned to him.

(11) The wrapper alone cannot be recognized as a mark to return the notes, if the notes are from one borrower and one lender this law holds good. When only one of them is present, however, if the borrower and the lender are present and one knows the mark of the wrapper and the other does not know—then the notes must be given to the one who knows the mark of the wrapper (Ramo).

(12) If two notes are found from one lender and one borrower, even if they are present at the court, and one gives the count of the numbers and the wrapper of the notes and the other gives no mark. The notes shall not be given to anyone till they will prove to whom they belong to.

(13) If three notes are found and the borrower and the lender are present and one states the count of the numbers or the wrapper and the other gave

no mark, shall the notes be given to the one who stated the mark?

(14) If one stated the count of the numbers and the other stated the style of the wrapper the notes must be given to the one who stated the count of the numbers.

(15) If one stated the count of the numbers of the notes and the style of wrappers and the other stated only the count of the numbers, then they are considered equal in the eyes of the law and the notes cannot be given to any one till they will be proved to whom they belong.

(16) If only one of them is present at the court and he stated the count of the numbers and the style of the wrapper then the notes must be given to him. If he stated only one mark, the note shall be given to no one (Schach).

(17) If one found three notes from one borrower and three lenders and the notes are acknowledged by the court they must be returned to the borrower, even without giving any marks, and shall not be given to the lender even he give mark. If it is not acknowledged by the court the notes must be given to them who give marks.

(18) If it is three notes, from one lender and three borrowers, the finder must return the notes to the lender even without giving any marks. If it is in

the handwriting of three different writers—if it is the handwriting of one writer, the lender must give a mark.

(19) If a lender presented a note for collection and afterward the note was lost, and there is evidence that it was lost, it is the duty of the court to write a judgment and force the borrower to pay the amount mentioned in the note (Rochs, B. B. 58).

(20) If one finds a receipt of a loan in the street and the lender claimed that he made the receipt ready before receiving payment from the borrower and he lost the receipt, and the borrower claimed that he paid the note and received the receipt and he lost it, the receipt cannot be given to anyone until it will be proved who lost the receipt (B. M. 19).

(21) If it is found in the possession of the lender a receipt for one note, it is not valid unless the note is found among the torn notes, although the note is not torn then there is a good reason to understand that the receipt is correct (B. M. 20).

(22) If the receipt and the note is deposited by a bailee and he said that the note is paid, he is believed, even if the receipt was seen in his possession, and even though no witness' signature is on the receipt, it can be returned to the borrower (L. c.).

(23) If the bailee died and did not notify anyone about the receipt, it shall not be returned either to

the lender or the borrower, even if the borrower admitted that the receipt belonged to the lender, it cannot be returned on account of conspiracy of the buyers of the real property and the note cannot be collected and cannot be torn; it must be left until someone can prove by evidence or witness (L. c.).

(24) If a receipt is written on the other side of the note or on the same side of note, even though without a witness and even though the note is in the hands of the lender, even the receipt is of a part of the note that is effective (B. M. 21).

(25) R died and it was found in his handwriting that this one note is all paid up, or a certain amount is paid; it must be decided according to the writing (Rochs.).

(26) If, however, it is written that a part of the note belongs to so and so, the part cannot be claimed by so and so because maybe R wrote to give a gift and changed his mind (L. c.).

(27) If a man makes a will in favor of his sons, that one note among all the notes is paid, but did not specify which one, all his notes are considered in the eyes of the law as paid (B. B. 173).

(28) If, however, if two debts (notes) are held of one borrower, one for a large sum and one for a small sum, the larger one, in the eyes of the law,

is considered as paid, and the smaller sum can be collected (B. B. 173).

(29) If, however, a receipt is found by the borrower of the small sum, then the larger sum can be collected (L. c.).

(30) If the lender commands on his death bed, that one note shall be released to the borrower as a gift, without notifying which one should be released, then the small one is released, because possession is nine points in favor of the possessor (Romo).

(31) If a lender say to the borrower, "a note of yours in my hands is paid," without specifying which one, then the larger amount is decided by law as paid, and the smaller sum can be collected. If, however, he said that a loan is paid, then all notes which are written in the name of the borrower cannot be collected, because that may mean that what you owed me is paid (B. B. 173),

## CHAPTER LXVI.

### THE LAW OF A DISCOUNTED NOTE.

(1) The sale of a note is not valid unless the note is delivered to the buyer, and an extra writing must be made by the lender, containing the language, that the note and all his right and obligation are sold and confirmed to you (B. B. 77).

(2) Without such writing the transaction of the note cannot be valid even for the purpose of the value of the piece of paper to cover the bottle, even that privilege does not belong to the buyer, and the money must be returned to the buyer (L. c.).

(3) Even if he delivered the note and made a form of agreement (kinon) that he confirms all the obligations to the buyer, it cannot be valid without demanding of the witness that they shall write a bill of sale on that note, as without the bill of sale it is not valid (Tur).

(4) Therefore, if R gives to B all his fortune as a gift, the real property, and with the same he included that the personal property shall be confirmed to B, and in that is included a note of C, even in that event, B cannot collect the note without the legal writing (Tur).

(5) The original note must be delivered to the buyer before the bill of sale is delivered. If, however, the original note is in his possession, even if he confirmed to the buyer with a form of settlement, (Hilpin) cannot be valid (Tur).

(6) If there is a pledge, on the note, there are two different opinions, Rabbi Migasch held that the ceremony of writing and delivering must be made and the Goenim holds that the delivery of the note alone is not sufficient, but the writing is valid with-

out the delivery, because so long as he takes possession of the real property, and wrote to the buyer confirming the note and all his obligations and rights, can be valid even without the delivery of the pledged note (*Tur*).

(7) If the buyer does not take possession of the real property, the delivery and the writing of the note is necessary (*L. c.*).

(8) In case of a sale of personal pledge, if the lender delivered the pledge to the buyer, even without delivering the sale note, the consideration of the sale of the debts is valid (*B. B.* 76).

(9) The manner of settlement by the delivery of notes is necessary to raise up the notes, if there are a number of notes packed in a large bale, being impossible to raise it, it must be settled by pulling, and the notes must be confirmed by the second person (*L. c.*).

(10) Therefore, if a man throw a debt note away, and another person comes and picks it up with the idea of being entitled to the collection of the debt, the finder of the note is not entitled to the collection of the debt, because it was not delivered by a second person (*B. B.* 76).

(11) If the lender transfer a piece of real property together with the notes to the same buyer, then the writing on a separate note and the delivery of

the debt note is not necessary, and even if the note is in another place, the transaction can be valid. The lender must say to the borrower verbally, I confirm to you the note and all its obligations and the rights contained in the note (B. B. 77).

(12) R presented a note for collection, containing therein, that C owed to B 100 zus and R claimed that B sold him the note and that he lost the bill of sale. If C believes that R bought the note and admits that he did not pay same, then R is entitled to collect (B. B. 173).

(13) If C claims that the note is paid, then B must take an oath that it was not paid and afterward the note can be collected by R (L. c.).

(14) If B admitted the payment of the note B must pay the whole amount of the note to R (L. c.).

(15) If B died then the heirs must take an oath, i. e., that the father did not state before his death that the note was paid, and afterward R is entitled to collect. If the heirs refuse to take the oath, then the heirs must pay R the full amount mentioned in the note (L. c.).

(16) If B denies that he ever sold or made a gift of the note to R, and admitted that he received payment from C, then he must receive an oath (hisces) and he is free (Tur).

(17) If a woman had a promissory note from another party and she afterward married, and transferred the note as dowry to her husband, he is entitled to collect the note without the ceremony of writing and delivery (Rambon).

(18) In the event an oral debt is transferred from the woman to the husband, it can be valid without the ceremony of the three parties, because husband and wife are like one (L. c.).

(19) If a man receives a field as a gift, and received a deed as evidence that the field belongs to him, and afterward the receiver of the gift wishes to return the gift to the donor, that cannot be dissolved with the return of the deed, but a new writing must be made with the same expressions, confirming the deed and all his rights (B. B. 169).

(20) If a man bought a debt note and the borrower died, after the transaction was made, and the lender also died, then the buyer must take an oath that the lender did not notify him and he does not know whether the note is paid, and then he is entitled to collect (Tur).

(21) If the lender is alive then he must take an oath, and if he refuses to take an oath, then the buyer is not entitled to collect and the lender must pay the whole amount of the note to the buyer (L. c.).

(22) If the lender has died, his heirs must take

an oath that their father did not claim anything regarding the note, and if they refuse to take the oath, they must pay the money to the buyer. If the note was sold after the borrower died, and later the lender died, the note cannot be collected even with an oath, because after the borrower died the lender is bound to take an oath of the collection (see Chap. 108), and since he died he cannot receive the oath.

(23) If a note is sold according to the law, then the buyer and the seller come before the court, and they command the borrower to pay the amount mentioned in the note to the buyer, and if he will pay to the lender he will have to pay a second time to the buyer (*Kesubeth* 85).

(24) If the borrower before notifying the court, paid the debt to the lender, he is free of liability, and it is the opinion that the buyer must return the note to the borrower, and the court will decide that the lender must return the collected money to the buyer, and if he spent all the money, and is unable to collect from him, the borrower is free of all liability (*Tur*).

(25) Another opinion holds that the borrower must pay a second time to the buyer.

(26) If the borrower paid a note to a buyer which transaction was not legally made, only the note was delivered and the confirmed note was not written,

and the lender stated it orally, "I confirm to you the note and all its rights of obligations," he is free of liability to the lender (L. c.).

(27) It is the opinion that this rule applies only when the lender knew of the collection and kept silent, then the borrower is free to pay again; if, however, the lender did not know of this collection, then the borrower must again pay to the lender, because he can say, "you have no right to pay before you find out whether or not the transaction was legal (L. c.).

(28) If the borrower is unable to pay a second time, then the lender cannot collect from the buyer, because he seized it.

(29) If the borrower put the amount of the note as a debt to the buyer, it is considered in the eyes of the law as paid.

(30) R has a note from B and commends that the debt shall be given to C in the presence of the three parties, then the debt legally belongs to C, even though the note is not given to C the buyer of the real property of B is bound to pay to C in case B is unable to pay, as they were bound to pay to R (Tur).

(31) In that case, C cannot take the note away from R, nor C can demand the money from B, and if B denies or B is unable to pay, and C will be

forced to collect from the conveyed property, then the court must force R to produce the note, and the decision will be rendered according to the note, and if the borrower paid C, the note must be taken away from R and returned to the borrower (L. c.).

(32) If R has in storage a bag of notes belonging to C, and commands that the notes shall be given to B in the presence of the three parties, the notes must be given to B as long as R does not withdraw. Should R withdraw, then the notes cannot be given to B, excepting when R wrote a note containing the form "confirming to you the notes and the rights of obligation, and then the delivery of the original note is not necessary, because the command to C shall the notes given to B is like the delivery.

(33) R has a note of B and C signed in the note as a witness and R sold the note to C, the deal is valid, and cannot be refused on account of suspicion, because the other witness will not allow false testimony (Yawomath 25).

(34) If the note is sold to the two witnesses who signed the said note, then if the borrower claims that the note is false, it cannot be collected (L. c.).

(35) R has a note of B and gives it to C as a gift, and B was one of the witnesses and R would like to withdraw from the transaction of the gift, and claimed that B has an interest in the witness of the gift because he wishes to be released from the

first lender, because he is a hard man and the second is milder. The right is with R and the gift transaction is void (*Tur*).

(36) If a man sold a note to another according to the law and afterward he released it or wrote a receipt for a part of the note or made an extension of them to the borrower, all his doings are valid, even though the lender made a condition with the buyer that he shall not release it, and afterward he released it, the release is valid (*Kesuboth* 85).

(37) The safest way for the buyer, should the lender not be able to release it, is to settle with the borrower and have him write a note in his name, or to take a form of agreement from the borrower that he owes the money to the buyer, and then no release can be made (*L. c.*).

(38) Even the heirs of the lender have the right to release the debt. If the heir can release a debt to himself, i. e., if R loaned his own son money, with a note, and sold that note to B and R died, if the heir has the right to release this debt to himself, there are two different opinions, whether it is effective or not (*Kesuboth* 81-19).

(39) If a man loaned money and commands to write the note on another name, the man whose name is written on the note cannot release the debt, because the money is not his, only the man who gave

the money have the right to release or to give an extension of the debt for a longer time.

(40) It is one opinion in the case where the lender has the right to release the note, that he also has a right to write a receipt saying that the note is paid, or to give an extension of time, and he is bound to pay for the damages to the buyer (N. J.).

(41) If the borrower writes in the note that he obligates himself to the lender and to anyone else who comes through his power in the note, and this note is sold to one who was born during the time when the loan was made, there are two opinions whether or not the lender can release the borrower (Gitin 13).

(42) If a man on his deathbed makes a gift to another of a promissory note, and died thereafter, his heirs cannot release the debt (B. B. 147).

(43) A woman has a promissory note or an oral debt, and afterwards she marries. The woman cannot release the debtor because the debt money no longer belongs to her, but to her husband (Kesuboth 85).

(44) And the same rule applies when a man borrows money from a married woman. She cannot release the debt without the consent of her husband (L. c.).

(45) If a man gives or sells a note to another,

by the manner of third parties, it cannot be released (Gitin 13).

(46) If a man sold a note to another which he had a pledge of that debt, and the seller delivered the personal pledge to the buyer, it cannot be released according to the value of the pledge. If the pledge was real property and the buyer took possession of that property, there are two opinions whether or not it can be released (Tur).

(47) If the buyer resold the note to the lender or to a second buyer, the first buyer cannot release the note, because the power of release is only vested into the first lender (Tur).

(48) The releaser must pay the whole amount of the note to the borrower, and if he dies the heirs must pay (Kesuboth 86).

(49) If the borrower is a slow payer, or his circumstances are poor, the damage of the releasee must be appraised, and the releaser must pay less than the full amount (Tur).

(50) It is the opinion that the releasor must only pay the amount received by the lender (Ramo).

(51) If it is the rule of the land that the lender cannot release the note, the buyer can collect the whole amount of the note from the borrower, because the law of the land is like the law of the Lord (B. K. 113).

(52) If the borrower claims that the note is false, and the lender is unable to acknowledge the note or the borrower is poor and unable to pay any part of the note, the releaser is not liable (Tur).

(53) If the debtor of the lender came and attached the debt note brought by the buyer, or someone else proved that the note belonged to him, i. e., the lender was a broker, and the money belonged to another, and he wrote the note in his name, and afterwards he sold the note to the buyer, then the buyer is entitled to collect the whole amount written in the note with expenses from the lender (Tur).

(54) If the borrower presented a receipt that the note is paid or he was released before the transaction of the sale is made, that is a business fraud, therefore, the money which is taken into consideration, must be returned (Tur).

(55) If the borrower was poor at the time of the sale of the note, and the buyer knew of that fact, and if the borrower became poor afterward, and he is unable to pay the note, then it cannot be collected from the lender, because it is the misfortune of the buyer (Tur).

(56) If the note was given as a gift, and the donor later released the borrower, the same rule applies, that the releasor must pay the damages (L. c.).

(57) Through the transaction of notes no over-

charge can be claimed, i. e., if A sold a note to B worth \$1,000 for a dinner or vice versa, no claim can be made. There is a different opinion if it is overcharged more than a half of what it is worth, then it is a business fraud, and the deal is void.

(57) In the case of a claim of note, the defendant cannot be put on oath, by the law of the Thora or court oaths. But it is an enactment of the rabinicle that the defendant must receive an oath of such claim (B. M. 56).

(58) The liability of guardians does not exist in notes, even a paid guardian if he was entrusted with notes and they were stolen or lost by negligence, is not liable to pay the full amount, but he must lose the higher cost of labor.

(59) If it was lost or stolen by negligence, there are two opinions whether the guardian is liable or not (Tur).

(60) If, however, it is damaged through the hand of the guardian, i. e., he threw it into water or fire, he is liable (L. c.).

(61) If it was stipulated with the guardian of the notes and a form of agreement was made (kinyon) that he shall be liable for any mishaps to the notes, that is effective and the guardian must than pay the whole amount (B. M. 58).

(62) Brothers or partners who have notes in partnership, and decide to dissolve, the notes must be appraised according to the value and time, and according to the borrower's financial standing, and thereafter they can dissolve (Tur).

(63) If there is only one note, either one can say to the other, "I will give the half value of the note this amount or you can give me for the half value of the note such an amount (Tur).

(64) If after dissolution and distribution some of the notes become lost or spoiled, on account of the failure of the borrowers, the loss is to be borne by the receiver (L. c.).

(65) If a man on his sick bed commanded that all his goods shall be given to so and so, and amongst the goods are found notes, the notes belong to the receiver of the gift, and the ceremony of writing and delivery is not necessary (B. B. 150).

## CHAPTER LXVII.

דין שמייה ופיזובול

### THE LAW OF RELEASE YEAR.

At the end of every seven years, thou shalt make a release and this is the manner of the release. Every creditor shall release the loan which he hath lent to his neighbor. He shall not exact payment of it from

his neighbor or his brother, because the release year in honor of the Lord hath been proclaimed (Deuteronomy, Chap. 15).

(1) After the destruction of the Tabernacle, the law of release as of debt is only an enactment by Rabinacle (Gitin 76).

(2) The release year was 5677 and the next release year will be in 5684 and in the U. S. year it will be 1923, about the month of September.

(3) The release year released a debt even the debt of a written note in which it is written that if the borrower will be unable to pay, the lender shall have the right to collect the debt from the sold property (Schwcas 10).

(4) If it is a note with a pledge of real property, if the borrower has the right to pay the lender with cash at any time that he so desires, the release year released the debt; if, however, he cannot pay him until the end of a certain time, the release year does not release the debt (B. M. 64).

(5) If two partners dealing in stocks and notes, and one partner took possession of the entire fortune, and in the meantime the year of release intervened, the other partner could collect his share, because the release year released only a debt (Rochs).

(6) If a surety man paid to the lender the debt,

instead of the borrower, and before he collected his money from the borrower, the year of release intervened, the surety cannot collect the money, because the year of release released it (Rasbo).

(8) If a borrower denied a loan and took an oath to that effect, and in the meantime the year of release intervened, and after the year passed he admitted the loan, or witnesses were found who testified, the loan can be collected (Rambam).

(9) If, however, he denied the loan and took an oath and admitted, or witnesses appeared before the end of the year of release, the loan cannot be collected (L. c.).

(10) If the lender claimed a debt and the borrower denied it, and the lender produced witnesses, and the court rendered a decision in favor of the lender, and gave a judgment against the borrower, and before the judgment was collected, the release year intervened, the judgment can be collected (Rochs).

(11) If the lender at the time the loan is made, makes condition that the release year shall not release that debt, the debt cannot be collected, because a man cannot make a condition against the law of the Thora. If, however, with the borrower was made a condition that he shall pay the debt, even in the year of release, then the debt can be collected, be-

cause a man can make himself bound to pay even such money as he is not liable for it by the law of the Thora (Machos 3).

(12) If a loan is made for a certain length of time, i. e., for ten years, and in the meantime the year of release intervened, the debt can be collected (L. c.).

(13) If the lender delivered his notes to the court for collection, and in the meantime the year of release intervened, they can be collected (L. c.).

(14) If the loan is made with a pledge, the value of the pledge can be collected, and it is an opinion, even the loan is more in value than the pledge, also can be collected (Schwuas 44).

(16) The credit from a store cannot be released. If the storekeeper put the credit as debt, it must be released (Schvies 10).

(17) Wages for labor cannot be released (L. c.).

(18) There was a great man whose name was Hilal, who made an enactment because the lenders refused to make loans in that year on account of the release, and so that the market of the borrowers should not be closed, he made an enactment to write a (prusbul) and some writings contained the form "I so and so deliver to you judges, so and so, in this place, that every debt which I have I shall be able

to collect them at any time I want to, and the judges must sign on the bottom, that if the lender made such terms, the debt can be collected (Gitin 36, Schvies M 10).

(19) The Prusbul can be written only when the borrower has a piece of real property, even though the piece of real property is hired by him or given as a pledge, from his borrower (L. c.).

(20) When the borrower's wife has real property the Prusbul can be written or if the guardian of the orphan who has real property, the Prusbul can be written to the orphans of the notes (L. c.).

(21) If a man divorces his wife before the release year, he is bound to pay her the marriage contract, and if the release year passes and the contract is still unpaid, it can be collected later; if, however, she received a part of the marriage contract before the release year the rest cannot be collected (Gitin 18).

(22) Five men borrowed money of one lender. It is enough with one Prusbul, and when it is one note written of all the loans, even if it is only to one of the borrowers' real property, the Prusbul can be written. If it is five lenders and one borrower, he must write five Prusbuls (Schvies M. 5).

(23) If adult orphans inherit a note from their father, and the year of release passed, the court must

plead for them because it is possible that their father made a Prusbul, or a condition with the borrower that he will be bound to pay even in the year of release and they are entitled to collect the debt (Rasbo).

(24) The release year is released only at the end of the year, therefore, if a man borrowed money in the release year, he is permitted to collect during the entire year until the setting of the sun on the night of the new year and if at the time of the sunset the debt is not collected and Prusbul was not made, the debt is lost (Erechin 28).

(25) If the Prusbul was ante dated, it is valid. If it was post dated it is not valid (Schves m. 5).

(26) If a borrower desires to pay a debt after the release year is past, the lender must say "I release you." If, however, the borrower said "never mind, I want you to receive the money as a gift," then the lender can receive it (L. c. m. 8).

(27) If a note where the release year is past and Prusbul was not written, the note must be taken away from the lender and given to the borrower (Tur).

(28) If a note is sold to a buyer and the release year is past, and a Prusbul was not written, the buyer cannot claim from the lender for his lost money,

because it is his fault that he did not write a Prusbul (L. c.).

(29) If a man bought a note of which is written such date that the release year is past, then the court must plead for the borrower that the seller made a Prusbul and lost, and he is entitled to collect the note (L. c.).

(30) If the vendee admitted that he never made a Prusbul, if he is poor and is unable to return the money to the buyer, he is not believed, and if he has rich means and is able to return the money to the buyer, he is believed, and the borrower is free of liability, and the vendee must return the money to the buyer, it is an opinion that even so the vendee is not believed because he sold it and he is not believed to harm the other with his admissions (Schach).

## CHAPTER LXVIII.

### THE LAW OF NOTES WRITTEN IN THE COURTS OF THE HEATHEN.

1. If a note is written in another language and another script and in such manner that it cannot be added to or diminished and signed by the Israelite witness and they understand the reading the note is valued even to collect from conveyed property.

2. If, however, the note is signed by a Heathen

witness the note is void. When the note is made as a settlement manner for a transaction sold to a buyer (Gitin 19).

3. If, however, the transaction of the settlement manner was made through another formal (Kinion) and the note signed by the heathen witness is only made for evidence, e. g., Bill of Sale, or Debt Notes, then the note is effective when the money was given in the presence of the heathen witness and they wrote in the note that they saw the giving of the money and the transaction was made in the presence of the Heathen Court, then it is valid. In that event if the borrower is unable to pay the debt or the field was taken away from the vendee they can collect only from the unsold property of the borrower or the vendor.

4. If one on his death bed made a will before the Court of the Heathen then the will must be fulfilled. (See Chapter 253.) If it is a rule of the Government to write every transaction in the record of the Court then all the notes even signed by heathen witnesses is effective because the law of the Government is the law of the Torah.

5. If a note is made in the presence of the Court and the borrower denies it the City Clerk is believed as witness to contradict the borrower (Ramo).

6. If one signed a document in the presence of

the Court, even though he cannot read, he is bound to pay because it is positive that they read the document before him and he believed the reader (L. c.).

## CHAPTER LXIX.

(1) If a borrower wrote a note in his own handwriting, saying that so-and-so owed 100 zus to so-and-so, even without his signing on the bottom it is valid and it can be collected from personal property (B. B. 175).

(2) If the whole note is written in the handwriting of another and the borrower signed his name on the bottom in his own handwriting, it is valid even without witness, and can be collected from personal property (Tur).

(3) Even though this writing is acknowledged by the court it cannot be collected from the heirs or conveyed property, only from the borrower himself if he admitted that he did not pay same (B. B. 176).

(4) If, however, the borrower pleads that he did pay, he is believed, and he must take an oath (heses) and he is free, and the lender cannot say "if you did pay why did you leave the note in my hands," because notes that are not signed by witnesses he did not care whether they were left in other hands or not (L. c.).

(5) If the borrower denies that it is his signature, if the signature is acknowledged by the court or witness testifies that it is his handwriting, he is considered as a liar and he must pay, and if it is not proven that it is his signature he must take an oath (heses) and he is free.

(6) If the borrower plead that it is his signature and that he forgot and signed at the end of the paper and it is possible that someone found and wrote in the rest, he is believed (L. c.).

(7) If it is signed in a record book of account by the two parties, borrower, and the lender and one witness, then the borrower is not believed, with the plea that he paid so long as the book is in the other's hand (Rochs).

(8) If a lender presented a note in the handwriting of the borrower to his heirs, even though they admitted that it is the handwriting of their father, the court must plead for them because it is possible that the father paid it. If the heirs are bound to an oath, there are two opinions whether they must receive an oath or not (Tur).

(9) If it is before the maturity of the note, or the father admitted before he died and commanded the heirs that the note shall be paid because they admitted that it is the handwriting of their father

or if the signature is acknowledged by witnesses, the heirs are bound to pay (Tur).

(10) If, however, they denied that the signature is that of their father, and it cannot be proven by other witnesses, even though it is before the maturity of the note, the heirs are excused from payment (Tur).

(11) R presented a decision of the heirs of S that their father was found liable to an oath to him on account of a civil claim and the heirs said, "maybe our father received the oath or paid for it." The heirs are free even from an oath (Tur).

## CHAPTER LXX.

(1) It is forbidden to lend money without witnesses, even to a learned man. The safest way to lend money is on a pledge, but a still safer way is to lend money on a note. The one who lends money without witnesses is like the one who puts a stone in the way of a blind man, for he encourages perjury (B. M. 75).

(2) If a man loans money to a borrower in the presence of witnesses, without a note or a form of agreement (kinyon) and the borrower pleads that he paid the debt between him and the lender, he is believed with an oath (heses) (Schvuas 41, B. B. 170).

(3) If the borrower pleads that he paid the debt, in the presence of the two witnesses, then it must be proven by the two witnesses' testimony. If these witnesses do not come or come and contradict the borrower, the borrower must take an oath (*heses*) and he is free. If the borrower said that he invited them as witnesses before he paid and they contradict him, he is bound to pay (*Tur*).

(4) Another opinion holds that if they contradict the borrower, he is bound to pay, but the borrower is not forced to prove with these witnesses (*Tur*).

(5) If the lender stipulated at the time the loan was made or later, that he shall not pay him except in the presence of witnesses, the borrower is not believed on his plea that he paid without witnesses and the lender can collect the note without an oath (*Schwuas 38*).

(6) If the borrower pleads "I did what you commanded and I paid you in the presence of witnesses and they went overseas or died, the borrower is believed, with an oath (*heses*) and he is free (*Mamnide*).

(7) If the lender commanded the borrower that he shall not pay him except in the presence of such and such witness and the borrower claims that he paid him in the presence of other witnesses, if these witnesses appear and testify that he paid in their

presence, the borrower is free. However, if the witnesses in whose presence he claims that he paid, died, or went overseas, he is not believed (L. c. 41).

(8) If the borrower claims that he paid in the presence of the witnesses appointed by the lender, and they died or went overseas, he is believed with an oath, because he fulfilled the condition (L. c.).

(9) If the borrower admits that he did not pay and insists that he will not pay except in the presence of the appointed witness, the borrower cannot be heard, and he must pay in the presence of the court, and they will write that he paid before them (Tur).

(10) If the lender said "you shall not pay except in the presence of so-and-so, the witness," and the borrower paid to the lender in the presence of themselves only, and an accident happened to the money, and the lender claimed that he received the money as a bailment until the appointed witness arrives, and therefore, he says that the risk of the loss must be extended by the borrower and he must again pay me for the debt. The lender's plea is not effective because he admitted that he received the money, and the borrower delivered to him the money as payment, therefore, the debt cannot be collected again (Schwuas 41).

(11) If a lender claimed an oral debt from a

borrower and the court found the defendant liable and he was unable to pay, and the court wrote a judgment against the borrower, and later the borrower pleaded that he paid, he is not believed, and the lender can collect with that judgment from the purchasers of the borrower's real property (B. M. 17).

(12) If a man sold his field on account of force, or under duress, and in the presence of witnesses a notification was written to the effect that the transaction must be void. The money of the persons forcing the sale in the hands of the vendor, is merely the law of an oral debt and cannot be collected from the conveyed property, because their deed is not legal and the vendor is believed when he pleads that he paid (L. c. 72).

## CHAPTER LXXI.

(1) If the lender made a condition with the borrower that he shall be believed at any time he claims that the debt is not paid, then the lender can collect the debt even without an oath, and the borrower is not believed when he claims that he paid, even though it is an oral debt (Rambam).

(2) If the borrower produced witnesses that he paid in their presence, then the borrower is free (Schwuas 42).

(3) If the lender made a condition with the bor-

rower that he shall be believed as two witnesses, even though the borrower brought witnesses that he paid in their presence, the lender can collect without an oath, and even though the borrower brought 100 witnesses, because two witnesses are like 100 witnesses (L. c.).

(4) If the borrower stipulated that the lender will be believed as three witnesses and the borrower should pay him in the presence of four witnesses the note cannot be collected again (L. c.).

(5) If the borrower presented two witnesses who stated that the lender admitted in their presence that he received payment from him, or they testified that the lender released the debt to the borrower, the testimony can be taken in consideration and the debt cannot be collected (Tur).

(6) If it is written in a note that the lender is believed and the borrower presented a receipt in the handwriting of the lender that he received a certain amount of cash from him, that date, another amount on another date, and the lender claimed that the money was given for other business, the right is with the borrower, and the amount mentioned in the receipt must be deducted from the debt (Tur).

(7) Even if it is written in the note that he is to be believed, it cannot be collected from the estate of young orphans, because maybe when they grow up

they will find receipts or witnesses that the debt has been paid (Tur).

(8) If it is stated in a note that the lender is to be believed, and through witness he is found out to be a liar, the belief is cancelled (Tur).

(9) If it is stated in a note that the lender is to be believed, and the debt is made for a certain length of time, even though the time is past the belief exists (Tur).

(10) The condition of the belief can be valid to the borrower himself. However, if the borrower died and the lender came to collect from the heirs, the lender must take an oath and then he is entitled to collect the debt, excepting when he stipulates in the first instance that the borrower gave belief to the lender for him and his heirs without oath, then the lender can collect the note even from the heirs, without an oath (Kesuboth 86).

(11) This rule of belief applies the same as if the borrower makes a condition with the lender that he shall be believed to say that he paid the note at any time without an oath, that can be valid, even for the heirs of the lender, if the lender died, and the heirs came to collect from the borrower, he is believed, to say that it is paid (Tur).

(12) If the borrower received such a belief, he

can plead that he paid the note even before its maturity (L. c.).

(13) And if the borrower died before the maturity of the note if the heirs are bound to pay the debt, there are two opinions, one holding that it cannot be collected, because the court must plead that perhaps the father paid the debt, and the other holding that the heirs are bound to pay, except when they produce witnesses to the effect that the father said the note was paid (L. c.).

(14) If it is stated in a note that R owes 100 zus to B or to C, and R gave belief to the one who presented the note; and B presented the note, and R claimed that he paid to C, and C admitted that he received payment, R must pay again to B (Rosch).

14. If B and C made the loan in partnership and C admitted that he received payment of the same. If C possesses means, then the court must collect one-half from C and give it to B. If C is unable to pay, he is not believed in his admission to make B lose his share, because the note is in his hand; therefore, the borrower must pay one-half to B and C is believed with his admission to lose his share (L. C.).

## CHAPTER LXXII.

## THE LAW OF PLEDGE.

1. If a man lends money on a pledge, it is forbidden to use such pledge because it is like usury. If the loan is made to a poor man on a pledge, such as a shovel or a hatchet, and the wages of them are high, and not spoiled much by use, it is then permitted to hire same without the consent of the borrower, and deduct the amount of wages from the debt (B. M. 82).

2. It is an opinion that the lender must hire the pledge to another but not to himself, on account of misrepresentation. If, however, the lender makes a condition with the borrower at the time the loan is made, he shall be permitted to use the pledge; he can use it (B. B. 8).

3. If one made a loan on a pledge, either money or fruit, either the pledge was taken at the time the loan was made, or after the loan is made, and such pledge was stolen or lost, even though not on account of negligence, the landlord is liable (B. M. 80; Schvuas 43).

4. If the value of the pledge is the same amount as that of the loan, they cannot claim anything from each other. If, however, the value of the pledge is more than the loan, then the lender must pay the difference to the borrower (L. C.).

5. If the amount of the loan is more than the value of the pledge, the borrower must pay the difference (L. C. 44).

6. If the pledge was stolen or lost through accident, *i. e.*, he was robbed by an armed robber, etc., then the lender must receive an oath, that it so happened, and the borrower must pay the whole debt to the lender (Tur.).

7. There is an opinion that if this pledge is received at the same time when the loan is made, and the value of the pledge is more than the amount of the loan, the lender is not responsible for the difference, but he loses the loan and nothing more; and when there is a doubt about anything, in the law, possession is considered nine points in favor of the possessor. Therefore, the money must remain in the place where it is, and the lender is free (Rams).

8. If it is lost through negligence he is bound to pay for the entire value of the pledge (L. C.).

9. The above rule applies only when the lender has no benefit in the loan. If, however, the lender received benefit from the loan, *i. e.*, the borrower permitted him to use the pledge, or he received a usurious rate of interest on the loan in a manner permitted by law, and the pledge is lost or stolen, the lender is liable even though the pledge is valued more than the amount of the loan (Rasbo).

10. If the lender gave the pledge in storage to the borrower as bailment, and the pledge was stolen or lost, in such case the borrower is not liable to pay for them, because the borrower was a guardian without compensation; in that event, the lender is liable to pay for the pledge, although it was lost in the possession of the owner, because he delivered the pledge to the borrower as bailment; therefore, it is as though it was lost in the possession of the lender (Mordechai).

11. If a man loaned money on a pledge and after his death it was discovered that the pledge was stolen or lost, the heirs must pay for the pledge (N. I.).

12. If the lender made a condition at the time of receiving the pledge, that he did not assume any responsibility even in the case of negligence, it is effective, and the lender is free even in the case of negligence (Mordechai).

13. R borrowed a sword from B, which he held as a pledge from another, and the sword was lost; B demanded a high price for the sword, as much as the borrower claimed from him, and R, not being aware of the great value of the sword, R is only liable to pay the value of an ordinary sword (L. C.).

14. If a man loaned money on a pledge and the same was afterwards lost or stolen, and the lender claimed that the amount of the loan was a Sala, and

the value of the pledge was a Shekel, and he demanded the difference of the Shekel, and the borrower said that the amount of the loan was a Sala and the amount of the pledge was a Sala, the lender must take an oath that the pledge is not in his possession, and the borrower must take an oath (Hises) that the value of the pledge and the amount of the loan are equal, and he is free (Schwuas 43).

15. If the lender claimed that the loan was a Sala, and the value of the pledge was a shekel, and the borrower claimed that the amount of the loan was a Sala, and the value of the pledge was three Denarin, then the lender must take an oath that the pledge is not in his possession and the borrower must swear as to how much the pledge was worth, and he must pay one Denar (L. C.).

16. If the lender claimed that the amount of the loan was a Sala, and the value of the pledge was a shekel, and the borrower said he is uncertain about the value of the pledge, then the lender must take an oath that the pledge is not in his possession and include in his oath that the pledge was worth two denarin (shekel), and the borrower must pay two Denarin (shekel) because he is positive that he owed the money and he is in doubt as to the payment (B. K. 111).

17. If the lender has witnesses that the pledge was

lost, then the lender may receive payment of the shekel without an oath (Tur).

18. If the borrower claims that the loan was a Sala, and the pledge was of the value of two sloum and the lender claimed that the value of the pledge was a Sala, if there are witnesses who can testify that the pledge was lost, or the borrower believes the lender on them lost, then the lender must take an oath (Hises) and he is free. If there are no witnesses to testify that same was lost, then the lender must take an oath that the pledge is not in his possession, and also include that it was not worth more than the amount of the loan and he is free (Schwuas 43).

19. If the borrower claimed that the loan was a Sala, and the pledge was worth two sloum, and the lender admitted that the value of the pledge was five denarin, then the lender must pay one denar, and he must recevie an oath that the pledge was not worth more than five denarin, and include in his oath that the pledge is not in his possession (B. M. 34).

20. If at the time when the claim is made by the borrower, the lender put the one denar in cash before the court and said, "Here is the difference of the value of the pledge and the loan," or he claimed that the borrower owed to him the difference from another

transaction, then the lender must take on (heses), and he is free (Tur).

21. If the borrower claims that the loan was a Sala, and the value of the pledge was two sloum and the lender said: "I did not know how much the pledge was worth, then the lender must take an oath that the pledge is not in his possession, and include in his oath, that he does not know that the pledge was worth more than the loan, and he is free. If, however, the lender admitted that he knew that the pledge was worth more than the loan, but did not know how much more, then the lender is bound to receive an oath because he admitted a part of the claim and he cannot swear because he is uncertain; therefore, he must pay to the borrower one sala (Rimigasch).

22. If the borrower said the loan was a sala, and the pledge was worth two sloum, and the lender said that the loan was a sala, and the pledge was worth a shekel, then the borrower must take an oath (hises) that the pledge was not worth less than a sala; and the lender must take an oath that it is not in his possession, and include in his oath, that the value of the pledge is not more than a sala, and they cannot claim more from each other (Tur).

23. If the borrower claimed that the loan was a sala, and the pledge was worth a sala, and he is will-

ing to redeem the pledge, and the lender acknowledged the entire pledge, and he only claimed that he lost the pledge, if there is no witness that the pledge is lost, and the borrower does not believe it, then the lender must swear that it is not in his possession and he is free (L. C.).

24. If the borrower claimed that the loan was a Sala, and the pledge was worth two sloum, and the pledge was lost, and the lender admitted the balance of the value, but he merely claims that the loss occurred through an accident, and he claimed the amount of the loan from the borrower, then the lender must receive an oath that the pledge is not in his possession and that he did not use it, but that it was lost through accident; and he is then entitled to collect his loan from the borrower, because the borrower is uncertain as to how the loss occurred, therefore, he is like one who is certain of the loan, but in doubt as to the payment of the loan (L. C.).

25. R claimed from B 100 zus on an oral debt; B admitted same, but claimed that he left a pledge for same, and the lender denied the pledge, the lender must take an oath (hises) that he did not leave a pledge in his hands, and the borrower must take an oath that he left a pledge equal to his debt or more, and they are both free.

26. If, however, B admitted that the pledge was

less in value than the amount of the loan, he must then swear that it was worth so much and he must pay the difference (L. C.).

27. R borrowed from B ten denarin on a pledge, and there was one witness who knew about the transaction, but he did not know the amount of the loan, and B claimed that the loan was 20 denarin. If B showed the pledge to the court or to the witness before the trial took place, the right is with R and B must prove his claim by witness; if not, R must take an oath (hises) and pay the ten denarin and receive the pledge; if, however, B did not show the pledge to the court or to the witness, then B is believed with an oath and he can collect 20 denarin (L. C.).

28. R borrowed from B 7 denarin on a pledge, and afterward R claimed that he paid B 2 denarin at one time, two denarin a second time, and on a third occasion one denar, and B claimed that he remembered but one denar, the right is with R, because the pledge belongs to R and B has only an interest in the pledge and the possession of same belongs to the borrower and cannot be taken away with a doubtful claim. Possession is nine points of the law (Rambam).

29. If a man borrowed money on a pledge and the lender pressed the borrower to redeem the pledge and the borrower said that the pledge should be sold

to the lender for his loan, if later the borrower withdrew the offer and wishes to pay the money for the loan, and receive the return of the pledge, he is entitled to it, because the first promises were on account of pressing (N. I.).

30. If a pledge was spoiled in the hands of the lender, and the borrower claimed that he was positive that same became spoiled on account of decay, or was eaten by moths or rats, if the lender claims that he stored it in a safe place to avoid decay, and, therefore, same was spoiled through accident, he must swear that it happened as he says, and he is free. If he admits that he did not keep the pledge in a safe place he is bound to pay the damages of the pledge (Tur).

31. If there is a disagreement between the borrower and the lender, *i. e.*, the borrower claims that it was worth twenty denarin and the loan was twenty, and at this time the pledge is worth ten denarin, and the lender claimed that the loan was twenty and the pledge was worth fifteen, and he claimed five denarin from the borrower, then the borrower must take an oath (hises) and he is free (L. C.).

31. If, however, the borrower claimed that the loan was twenty and the pledge was worth thirty denarin, and that at this time he is worth fifteen, and desired to leave the pledge for the loan and demands 10 de-

narin, the difference between the value of the loan and the pledge, and the lender claims that it was worth 25 and he is only required to give him 5 denarin, then the lender must swear that same is not spoiled more than 10 denarin, and he can deduct from the debt 5 denarin and the balance he can collect from the pledge.

32. R demanded from B a pledge that was in his hands and B answered that his small son came to him and asked in his father's name for the pledge and that B gave him the pledge, and R claimed that he did not receive same, B is liable to pay for the pledge because the pledge must be returned to the borrower himself (Tur).

33. If the lender claims that the pledge was lost through accident and, therefore, the borrower is bound to pay the debt in full, and the borrower claims that he is positive that the lender sold the pledge and received money for same, then the borrower must take an oath (hises) and he is free (Tur).

34. If A, the lender, took the pledge, and pawned it with B or he gave it as a gift to B, and the pledge became lost while in the possession of B, through an accident, and the borrower demanded the pledge from the lender and claimed that it was worth one sala, and the loan was a shekel, and claimed a balance of a shekel from A, the lender, and A claimed

that the pledge was worth 3 denarin, and the difference was only one denar, thereby A admitted a part of the claim and he must take an oath that the pledge that the pledge is not in his possession, and that it was not worth more than 3 denarin and he must swear was lost through accident, but that it is not possible for him to swear because the accident did not happen while the pledge was in his possession, and B is not believed with his oath, because the borrower can refuse, in as much as he can say that he delivered his pledge to A and that he believes him on an oath, and not B. Therefore, A is bound to swear, but if he cannot swear, he must pay (Tur).

35. R had money of B, and C requested that R should lend him the money, R agreed and C gave R a pledge for the money, and R gave C a written letter to B that he should give the money to C and B gave him the money; afterwards the pledge was lost in the hands of R. If the loss occurred before C received the money, then R is not liable for the loss of the pledge. Therefore, if R takes an oath that the loss occurred before C received the money he is entitled to recover his money (loan) from C. If R is in doubt the money cannot be recovered from C if the loss occurred after C received the money, R is liable to pay for the pledge (Tur).

36. An heir presented a note to R which he had in-

herited from his father stating that R owed a certain sum and also that he had a pledge belonging to R, and claimed that perhaps the pledge was lost through accident while in the hands of his father, and demanded the amount of the debt from R. R must take an oath (hises) that he did not receive the return pledge and he was worth equal to the debt and he is free (Tur).

37. R left a pledge in the hands of B, and B died and left small orphans, and R came to redeem his pledge from the heirs of B, and he claimed that the amount of the loan was 50 denarin, and the heirs claimed that their father commanded before he died that the loan is 100 denarin; the 50 denarin admitted by R must be given to the orphans immediately and the other 50 must be deposited with a bailee until the orphans reach their majority, and afterwards they must take an oath that their father commanded that the amount of the debt was 100 denarin, and then they are entitled to receive the deposit of the 50 denarin in the hands of the bailee (Tur).

38. If the borrower paid up the amount of the debt and demanded the return of the pledge and the lender informed him that he could not find it that day, but that he should return at a certain hour the next day when he would be able to return the pledge, and in the meantime the pledge was lost or stolen

then the lender is liable to pay, and if it was stolen or lost after the appointed time, he is not liable. Therefore, if the borrower brought witnesses that he came at the appointed time for the pledge, but did not receive it, the lender is liable to pay, and if there were no witnesses then the lender must take an oath that he did not come at the right time and he is free (Tur).

### CHAPTER LXXIII.

1. If a lender loaned money to a borrower without specifying the length of time of payment, and it is not a custom of the locality, about the time the lender cannot demand the amount of the loan before the expiration of 30 days after the date of the loan, whether it is a loan made with a note or an oral debt, or with or without a pledge (Machs 3).

2. If, however, it was stipulated that the lender can demand his money at any time that he wishes, then he can demand the amount of the loan, even on the same day (L. C.).

3. If, however, an article was borrowed without specifying the date of return, it can be demanded on the same day (Schabos 148).

4. If the loan was made for a certain length of time, even though there was no form of agreement, it cannot be claimed before the expiration of that

time, whether it was an oral debt, or a debt with a note, or with or without a pledge, even though the lender died or the borrower died, and the heirs have the same rating of credit as the father (L. C.).

5. If the lender claims that to-day is the expiration of the time of the loan, and the borrower claimed that ten days later is the expiration of the loan, the borrower must take an oath (hises) and he will pay ten days later. If there is one witness who testifies in favor of the lender, then the borrower must receive a Thora oath.

If a borrower swears that he must pay a loan on a certain day, and the due date fell on a Saturday, or on a legal holiday, he must pay the note one day before the expiration of the time (Tur).

6. If a borrower swears that he will pay a debt on a certain day and the day arrived, and the lender is not in the city, the borrower is free of the oath until the lender returns, or he will send his agent, and the borrower must have the money ready the same day, and he is forbidden to spend it (Rasbo).

7. If R has a debt note for a certain length of time from B, and in the meantime R came to the court and claimed that he found part of the fortune of B and would like to attach them, because he feared that if they came into his possession, he would spend it, and that he would not be able to collect his debt, if

the judge sees some good reason for his claim, that the borrower will not be able to pay his debt when the note becomes due, it is a command of the judge to attach the fortune until the time of payment of the note falls due, and the same law applies to an oral debt for a certain length of time, and in the meantime the lender sees that the borrower spent his fortune and had no real estate to collect from, or the borrower wanted to go overseas, and the lender demanded that the borrower shall either pay him his debt or that he shall give surety that he shall be secured for his debt, his demand must be heard (*Tur*).

8. The court has the right, if they find it necessary, to attach the fortune of the defendant (*Ramo*). If the defendant is from another city and the plaintiff is in this city, and the defendant has property in the city, where the plaintiff lives, and the defendant is unwilling to answer the claim of the plaintiff, the court has the right to attach the fortune of the defendant until he comes, and try the case before the court where the plaintiff lives. The defendant must be notified that they well attach his fortune (*Ramo*).

9. If the defendant is an honest man and he is willing to attend the trial of the court, then his fortune cannot be attached and the plaintiff must go to

the city of the defendant and demand his claim through the court of the city of defendant (L. C.).

10. If a man has a business in the city, and had a number of creditors and he moved from the city, and left his fortune in the former city, then the plaintiff can force the defendant by attaching his fortune, to come to the former city and be tried by its judges, but he must be notified before so doing (L. C.).

11. If a man bought a field from his comrade, and in searching the title a claim was found and the buyer came to the court and claimed that perhaps he would lose the claim, and the vendor would spend the money and then be unable to pay and, therefore, he claim that "for my money you buy real property, and if the claimant wins my field, I will be able to collect from the real property"; this plea is effective.

12. After the loan is due, and it is a loan on a pledge, the court must notify the borrower that if he fails to pay the debt, they will give permission for the sale of the pledge, and if the borrower is not in the same city, it is not necessary to wait until he comes, but the pledge can be sold by the court. If the pledge is of such nature that it may become spoiled, it can be sold even before the loan is due, either in the presence of the borrower or in his absence (Tur).

13. It is the opinion, even when the time of the loan falls due, the pledge cannot be sold until 30 days after

the claim for the loan is made. The claim can be made in the presence of witnesses, and even if the claim is made between the borrower and the lender, and the borrower admitted the claim, so after 30 days the pledge can be sold (L. C.).

14. The pledge must be sold by a court of three judges, and they must appraise them according to the market price, and the court will permit him to sell at such price in the presence of witnesses because the borrower shall not say that he obtained more money for it. If, however, he sold it without the appraisal of three judges, the deal is invalid. If it is impossible to make the deal void, the lender is bound to pay the difference in value (L. C.).

15. The lender is forbidden to buy the pledge for his own use, on account of misrepresentation. It is an opinion, that if the pledge is sold in the presence of three judges, then the lender is permitted to buy the pledge for his own use (B. M. 38).

16. If the borrower made a condition with the lender, that if he failed to pay the debt by a certain day, he shall be entitled to collect all the debt from the pledge and the balance shall be a gift, or if he made a condition that if he failed to redeem the pledge on that particular date, the pledge should belong to the lender; that is not effective and the pledge

can be redeemed, and the difference belongs to the borrower (Tur.).

17. If the borrower at the time the loan falls due, says to the lender, "go and sell the pledge," and the lender sells it and later the borrower wishes to make the sale void, because he claims that the permission was given on account of being pressed and wanted to rid himself of the lender, his claims are not effective and the sale is valid. If, however, the pledge is not sold, the borrower can withdraw his promises (L. c.).

18. If the lender said to the borrower, "I can get for your pledge 20 zus," and the borrower said, "Sell it for that amount"; subsequently the lender had some other business to attend to in another city, and he took along the pledge and sold it for 30 zus, the borrower is entitled to the benefit of the 10 zus, and the lender is entitled to the extra expense accruing on the freight of the pledge. The lender cannot charge for his own trouble because he did not go especially for the pledge (Rochs).

19. If the borrower came to redeem his pledge and the lender said, "You released the pledge to me a long time ago," that is not effective, because the release can only be legal by a loan, not by an article that is in existence, except when he gave it as a gift (L. c.).

20. If the borrower comes to redeem his pledge and the lender said, "I notified you to redeem the pledge at the time the loan fell due, and you said to me, 'I shall pawn it to another,' and I understood that you wanted me to pawn it and pay interest, and I did so, and now you must pay the interest with the principal and you will get your pledge"; and the borrower claimed that he permitted him to pawn the pledge in a free loan without interest, the right is with the borrower and the amount of the interest must be paid by the lender (L. c.).

#### CHAPTER LXXIV.

1. The loan can be collected in any place, even if the loan is made in a populated place and the lender found the borrower in a wilderness, and he knew that he had enough money for expenses until he came to his home and enough money to pay the loan. The lender can force the borrower to pay him his debt (B. K. 118).

2. If the borrower wishes to pay the debt in the wilderness, then the lender can refuse to receive the payment on account of the risk in carrying money until he came to a populated place, because the loan was made in a populated place, but in any populated place he must receive the money, even though it is not the place where the loan was made or the place

of the borrower, and even he must pass the wilderness until they arrive at home (Tur).

3. If a loan is made for a certain length of time and the borrower would like to pay the debt before the time to save the responsibility of the money, *i. e.*, during a panic or exchange of money when it is apt to depreciate, and the depreciation of the money does not begin at present, but is expected at a later time, if the loan is due, the lender must receive the money, and if it is before the due date of the loan, the lender cannot be forced to receive the money (L. c.).

4. If there is no panic, and no depreciation of money, and the borrower wants to pay the debt before the due date, and the lender derives no benefit from the loan, the lender must receive the money even before the due date, because the appointed time is only made to favor the borrower (L. c.).

5. If a man gave a field as a pledge, for a certain time, the lender shall eat the fruit and deduct a part of the debt each year. And the borrower wants to pay the loan before the due date, the lender can refuse to receive payment except when the borrower permits him to use the fruit until the due date of the loan (L. c.).

6. If a borrower said to the lender before the loan is due, "Here is your money bond," and the

lender refused to receive it, and afterward the money was stolen or lost, the borrower is bound to pay again (Ramo).

7. If a loan is made for a certain length of time and the borrower wishes to make payment of the debt on installments before the loan is due, it is an opinion that the lender cannot refuse and demand all the money at one time, because the payment of installment is payment. However, if the loan is due, the lender can refuse installment payment (B. M. 77).

8. Where one mortgages his two houses or two fields for a certain sum in one mortgage, and half of the sum is paid and the borrower wishes to be released from one house and shall can made another loan of the house, the mortgagee may rightfully refuse to discharge the mortgage on one house; he may either require the other half amount and discharge the mortgage on both houses, or he may still retain his mortgage on both houses until the other half of the sum is paid (Kidushin 20).

9. If a loan is made on a pledge, of personal or real property, and the pledge is more in value than the loan, and the borrower said that the lender shall collect from the pledge and return the balance, it is not effective, and the same rule applies if the pledge is equal in value to the loan, the lender cannot be

forced to receive the pledge in payment of his debt and return the note (Tur).

10. If the borrower at the time the note fell due said, he had neither money nor personal property, but only real property, and offers it to the lender for his debt, and the lender said, "I do not want real property, I would rather wait until you get the cash, but do not force me to accept the real property because I am not now demanding the money," the right is with the lender (L. c.).

11. If a man made a loan for a certain length of time and a condition was made that he should pay with coin, and when the time of payment arrived the government nullified the coin in that state, and it is valued in other states. Then, if the lender had business to attend to in the other state and must not go especially for the purpose of exchanging the coin the borrower can pay with the same coin received at the time the loan was made, and if he has no interest in the other state, the borrower must pay with the money that is now in existence in the market (B. K. 96).

13. R loaned from B 10 denarin and at the time the loan was made, 10 corduzo made 1 diner, and when the time of payment came, it was 6 cordozo for 1 diner, R must pay the price of ten cordozo, the sum

that was in existence at the time the loan was made (Tur).

If it is a rule of the Government about payment, the same must be obeyed.

## CHAPTER LXXV.

### הלכות טוען ונטען

#### THE LAW OF PLAINTIFF AND DEFENDANT.

1. If one claimed from the other 100 zus, the court must say to the plaintiff, "plain your plea, for what business does he owe you, did you lend him cash, or for storage or for damages?" Through a good explanation the truth can be arrived at, and the same applies to the replies of the defendant that he does not owe him. A good explanation is necessary to be given, because some time he may be mistaken and imagine that he does not owe him while the fact is, that he does owe him (Sanhadrin 29).

2. R claimed 100 zus from B, and B admits 50 zus. B must take a Thora oath for the 50 zus he denies and pay the 50 zus admitted (Schwuas 39).

3. If B produces one witness to testify that the loan was only 50 zus, there are two opinions, whether B is free of an oath or not (B. M. 2). Tur.

4. If R said to B, "Your father had loaned me

100 zus, and I paid him 50 zus, and I owe him 50 zus," then R must pay the 50 zus and is free of the other 50, even of an oath, because nobody claimed it and he admitted it himself; therefore, he is believed (Schwuas 42).

5. If R claimed 100 zus from B and B denied all, and two witnesses testified that B owed R 50 zus, B must pay the 50 zus and receive an oath for the other 50 zus (B. M. 3).

6. If, however, R claimed from B articles of value to the extent of 100 zus, and B denied same, and witnesses testified that they saw some of these articles to the value of 50 zus in his possession, then B is considered as a liar and is not believed with an oath; therefore, R must take an oath and receive payment for the claim of 100 zus (L. c.).

7. If R claimed 100 zus from B on a certain date from the first loan, and 100 zus from the second loan on a certain date, and the defendant answered, "You have nothing with me, because of the first loan I paid you so much, and on the second loan I paid you so much," and the court immediately detected from the arguments that B owed R a balance of 20 denarin, then the same law applies as in the testimony of witnesses (see paragraph 5), and B must pay the 20 denarin and swear for the balance (Tur).

8. If R claimed 100 zus from B and B admitted 50 zus and said, "I do not owe you any more," and put the 50 zus in cash just before the trial began, he is free of a Thora oath of the balance and must receive an oath hises (B. M. 4).

9. If R claimed from B 100 zus and B said, "You have no money with me," or he said, "I owed you 100 zus, but you got some pledge from me," or he said, "you released the money to me," or "you gave it to me as a gift," B is free of a Thora oath, but he must receive an oath (hises) (Tur).

10. If R claimed from B 100 zus because he robbed him, and B denied it, then B must take an oath (hises) and is free. If B admitted a part of it, or one witness testified that he robbed him, then B must take a Thora oath (L. c.).

11. If R claimed 100 zus from B, either a loan or a storage, and B said, "I am uncertain whether you loaned me or gave me as bailee," then B must take an oath that he is uncertain and he is free by the law of mankind, but by the justice of Heaven he is bound to pay (B. K. 108).

12. If R claimed 100 zus from B for a loan or a storage, and B answered, "I know that you loaned me or gave me as storage, but I am uncertain whether I returned it or not," then B is bound to pay and R is free even of an oath (hises). If subsequently B

said, "I recollect that I paid you for the loan," he is believed with an oath (Schwuas 40).

13. If R said to B, "I owe you 100 zus either for a loan or storage, or I robbed you, and I am uncertain whether I paid it or not," he is free even by the law of mankind; but he is bound to pay by the justice of Heaven. If, however, R said to B, "I am uncertain whether or not I owe you 100 zus, either for a loan or storage, or whether I robbed you," he is free even by the law of Heaven (L. c.).

14. If R said to B, "I owe you 100 zus," and B said that he is sure that he does not owe me anything, B is free, even if he knows positively that R loaned him money, because his reply is like a release, and if subsequently R demanded the 100 zus and said that he recollects the loan, he is not believed, and cannot withdraw his first testimony; it is an opinion that if B said, "I looked over my records and recollect that you owe me the 100 zus," then R must pay (Tur. Schach).

15. If R said to B, "You owe me 100 zus for a loan," and B said, "I am uncertain whether you loaned it to me or not," and R brought a witness who testified that he loaned him 100 zus, then B is bound to swear to contradict that witness, and cannot swear because he is uncertain; therefore, he must pay the 100 zus (B. B. 33).

16. If R claimed 100 zus from B and one witness testified that he saw that the loan was made, B replied, "Yes, I borrowed it, but I paid it," if the same witness testified that he did not pay, *i. e.*, the witness testified that on the particular day that the defendant claims he paid it, he was with him all day and he is positive that he did not pay, or the witness testifies that the day he claims to have paid, was before the loan was due, or B had denied the loan before and afterward, when R brought the one witness, he said that he loaned and paid for all such claims, B is bound to swear, and if he cannot swear, he must pay (Rambam).

17. If R claimed that B seized from him an article, and brought a witness who testified to the same, and B admitted that he seized the article, but that it belonged to him, B is bound to swear, and if he cannot swear, therefore he must pay (B. B. 33).

18. If R claimed 100 zus from B and B replied that he owed him 50 zus and that he is uncertain as to the balance; B is bound to take an oath for the balance, and he cannot swear because he is uncertain; therefore, he must pay the full amount, and the plaintiff is free of an oath (L. c.).

19. If, however, B replied that he loaned from him 50 zus and paid him; and the other 50 zus I am uncertain as to whether I borrowed it or not, B must

take an oath (hises) that he paid the 50 zus and that he is uncertain about the other 50 zus, then he is free (B. M. 98).

20. If R claimed from the heir of B on an oral debt for 100 zus that was loaned to the father, and the heir replied, "I am uncertain whether he loaned it or not, even if witnesses testified that the loan was made, or perhaps he borrowed and paid it," the heir is free even without the oath of an heir.

21. If, however, the heir admitted 50 zus and denied the other 50 zus, and stated that his father owed only 50 zus and not any more, then the heir must take a Thora oath and pay 50 zus.

22. An oath cannot be granted on a doubtful plea. That is, if one said to the other: "I think that you have 100 zus belonging to me in storage," or "I do not think that you returned to me the 100 zus which I loaned you," then the defendant is free of an oath (hises); and even by the law of Heaven he is not liable because the plaintiff's plea is doubtful, and the defendant claims that he is positive that he does not owe him anything (Schwuas 40).

23. If R claimed and said to B that he loaned him money, but is uncertain as to the amount, and B admitted that he loaned him some money, but is not certain as to the amount, then the defendant must pay

the amount he thinks he owes, and the defendant is free without an oath (Tur).

There is another opinion, because the borrower remembers that he borrowed, but he is merely in doubt as to the amount of the loan; therefore, he must arbitrate with the lender until they satisfactorily release each other (L. c.).

24. If A claimed that he thought his father had 100 zus with B, he is free without an oath. If, however, he said that he was positive that his father had 100 zus with B, and B denied all of it, he must take an oath (hises), and if he admitted part of it, he must take a Thora oath (Tur).

25. If R said to B that his father told him that he had 100 zus with B, and B replied that he had only 50 zus of his, one opinion states that he is free without a oath hises, and the other opinion states that he must receive a Thora oath (Tur).

26. If R told B that he found in his father's record book which shows that he owed his father 100 zus, and it is certain that it is his handwriting, and B denied it, it is the opinion that B must take an oath (hises) (L. c.).

27. If R claimed from B 100 zus which C told him that B took from him, and B denied it, R brought C and he testified to the same, then B must take a Thora oath to contradict the witness (Tur).

28. If R said to B, "you owe me 100 zus," and B said, "I do not owe you anything, because I paid you," and the plaintiff demanded an oath (hises) from the defendant, and the defendant claimed that R had a note from him and that R wanted B to swear in advance, and that R would bring the note later and collect from me. The court must command R to bring the note before he receives the oath. If R replies that he never had a note, then the court must command that the lender must destroy all the notes that he has of that defendant up to date, and thereafter the plaintiff can make him swear (Tur).

## CHAPTER LXXVI.

1. If one borrowed money from two lenders on an oral debt, 100 zus from one and 200 zus from the other, and they notified the borrower at the time of the loan, which one was the owner of the 100 zus and which one was the owner of the 200 zus, and when the time of collection arrived, each one claimed that the 200 zus belonged to him, and the borrower did not remember, he must pay 200 zus to each one after they took an oath that the 200 zus belonged to him. If, however, the borrower made out one note for 300 zus and delivered it to one of them, even though they notified him to which one the 200 zus belonged, and to which one the 100 zus belonged, and later when the

note fell due, each one claimed two hundred, then the borrower must give each one 100 zus, and the balance he shall retain in his possession until they admitted to each other or they bring evidence to prove to whom the 100 zus belonged (B. M. 37).

2. If two claim from one, and each one said that he loaned him 100 zus, and he said that he borrowed 100 zus from one of them, but did not remember from which one, he must give each one 100 zus because he certainly borrowed but is uncertain whether or not he repaid it (L. c.).

3. If R said to two people, "One of you loaned me 100 zus, but I do not know which one of you loaned same to me," he is free by the secular tribunal law, but by the law of Heaven there are two opinions, whether or not he is bound to pay (L. c.).

## CHAPTER LXXVII.

1. If two borrowers loan in partnership from one lender a certain sum at one time, or both bought one bargain on credit, or received an article in storage from one, whether they issued a note therefor or it was an oral debt, these two are sureties for each other, even though they did not specify that fact, and if one is not able to pay the plaintiff can collect the entire amount from the other party, and the party who paid

the whole amount is entitled to collect from the other surety one-half of the amount (Jerusalmi Schwuas).

2. If each one is in position to pay the debt, the plaintiff must collect one-half from each party, except if it was specified at the time the loan was made that he can collect the whole amount from either one he chose (Tur).

3. If one of the partners borrowed money for the business, the other party is obligated to pay even though the loan was made in his absence, when it is proven by witnesses or the other party admitted that the money was borrowed for the use of the business (Tur).

4. R had borrowed money from B, but B said on condition that C and D shall act as sureties for the loan; when the loan fell due R was poor and unable to pay, and B collected all his debt from C and C went to collect one-half from D, and D claimed that he was not surety for C but was surety for R, and then three signatures were endorsed on the note; therefore, D was responsible for only one-third of the amount, his claim is not effective and he must pay one-half of the amount (Tur).

4a. The same rule applies if there are three sureties for one loan, and the borrower is unable to pay the note, and one of the sureties is also unable to

pay his third, and the lender collected the whole debt from one surety, the party who paid the note has the right to collect one-half from the other surety. In case the surety is not poor but if he is recalcitrant, he can only collect one-third from each one (Sema).

5. R claimed a loan from two borrowers and one denied it, and the other admitted it, the testimony of the admitting party cannot bind the one denying to receive an oath (Tur).

6. If one claimed one loan from three borrowers and two admitted and one denied it, the testimony of those admitting cannot bind the one denying to pay on account of their testimony (L. c.).

7. If two borrowed money from one lender on one note, and the lender released one, the lender can collect one-half of the debt from the other borrower. It is an opinion that the lender cannot collect the other half and all the debt is released; therefore, if it was specified at the time the loan was made, that the lender can collect the whole amount from either one, and he released one, then the whole debt is released. If at the time the loan was made, it was not specified that he could collect the whole amount from either one, and he released one, then he can collect one-half from the other (Ramo).

8. If one borrower received one loan from two

lenders, although in one note, and one lender released all the debt, the other lender has the right to collect from the borrower one-half of the debt (Rasbo).

9. If two loaned money to one borrower, and one lender wishes to collect his share, he cannot be heard until the other lender appears. If, however, the other is in the City and was notified and he refuses to come, the borrower has the right to give the whole amount to the one, and if the borrower wishes he can give him one-half and the other half shall be deposited by the court until the other lender will come (Kesuboth 94).

10. If, however, one made a loan of 100 zus and the lender died, and he left two sons, and one of the sons claims his half, he is entitled to collect his share even in the absence of his brother (Ramo).

11. If one borrowed money from two lenders, and the note is written in the name of one of them, and the other, whose name does not appear on the note, wishes to collect the debt, the borrower can refuse to pay him and can say that he does not owe him anything, until he brings a power of attorney from the one whose name appears on the note, but the one in whose name the note is written, or if both names appear on the note, then either one who comes to collect the note can collect the whole amount without a power of attorney (Rasbo).

12. A husband and wife borrowed money from one lender, and both signed their names to the note, and the husband is unable to pay the whole amount, and the woman has no separate funds which belong to her, then the lender can collect one-half from the husband and for the other half he can obtain a judgment against the wife, which can be collected after the death of the husband, or if the husband should divorce her, and she will be entitled to collect the money mentioned in the marriage contract, then the creditor will be entitled to collect from her the money. If the husband or his heirs should pay all the debt, then they can collect half from her out of the money of the marriage contract (*Tur*).

13. R owed B 100 zus and afterward R came with his wife and borrowed from C 100 zus; R then died, and there is not sufficient funds in R's estate to pay the marriage contract, and B's debt; the court collected from estate the marriage contract according to the law, because the wife has the preference, and there is nothing left for B's debt, C can collect his debt from R's wife from the money she collected from the marriage contract. B cannot collect from C, even though he had the preference to C in R's debts, because C did not collect from R, but merely from his wife (*Rief*).

14. R wrote a Bill of Sale as gift on a house to

his son, and to his wife, and specified that they shall take possession of same together only, and the son died ; this house belongs to the son and his wife had the right to collect the money mentioned in the marriage contract from that gift, because that which was written, that they shall take possession together, means merely that they shall not collect separately one-half. Therefore, since her husband died she is entitled to collect in full (Ramo).

### CHAPTER LXXVIII.

1. If a loan is made on a certain date and the lender claimed the loan in the meantime, and the borrower pleaded that he had paid, before the due date, he is not believed, because it is certain that no one will pay a debt before the time is due ; therefore, even if the borrower died before the expiration of the loan and left small orphans, the lender is entitled to collect from the estate with his note even without an oath (B. B. 5).

2. This law applies when the loan was made in the presence of witnesses, and they testify to the loan and the expiration of the time when it falls due. If, however, there are no witnesses on said loan, and the borrower admits the loan, he is believed with an oath that he paid the loan on account of migy, because he can say that he never borrowed it, or the due date is

past, therefore, he is believed to plead that he loaned and paid it (*Tur*).

3. If the lender claimed the loan in the meantime and the borrower said that he had paid it, and his claim was refused by the court, if subsequently when the time is past due he claimed that he paid it just then, he is considered as a liar and is not believed (*L. c.*).

If money was entrusted to a bailee, even though for a certain length of time, the bailee is believed to plead before the time is due that he returned it (*Ramo*).

Wages can be collected at the end of the work, and if the employer claims that he paid before the work was finished, he is not believed, and the same rule applies to a credit in business of a certain length of time, if he plead that he paid before it was due. If a man is hired to write a book containing many sheets, each one is the end, and the employer is believed when he says that he paid at the end of each sheet, and that is the same law with all work which can be divided, that the employer is believed to plead that he paid for each part (*Ramo*).

4. If the borrower died before the expiration of the loan, and the lender came with his note to collect from the buyers who bought the real property from the borrower after the loan was made, there are two

opinions, one holds that the lender need not swear and another authority states that he must swear before he collect from the buyers (Tur).

5. If the lender claimed the loan on the same day that it fell due, and the borrower claimed that he paid on the morning, if it is an oral debt, he is believed, and must receive an oath (hises). If it was a loan with a note he is not believed (B. M. 102).

If the lender claims the loan after the time is past due, and the borrower claims that he paid within the time, then the borrower must take an oath and he is free. If one loans money to another and does not specify when the loan shall be paid, even though it is not permissible to demand the loan before the thirty days, the borrower is believed to claim that he paid before the thirty days (Tur).

## CHAPTER LXXIX.

1. If R claims from B 100 zus and B denies, and he says that he never borrowed any money from him, and two witnesses come and testify that B loaned the money and paid, and the lender claims that he has not received payment, then B is bound to pay the 100 zus, and R need not take an oath, because everyone who says that he did not borrow, he admitted that he never paid, and his admitting the same is more believable than one hundred witnesses, and he who says that he

never borrowed is contradicted by the witness (Schwuas 48).

2. If R claimed a note from B, which is in B's handwriting, and B denied that it is his handwriting, and another note was found that could be compared with B's handwriting, or a witness came and testified that it is the handwriting of B, then B is considered a liar and he must pay for it (Tur).

3. If R claimed from B 100 zus, and B said, "maybe you owe me the same amount that you claim from me," there is an opinion stated that they do mean that he does not owe anything, and if afterward witnesses testify that R does not owe to B, even if they testify that B paid to R the latter is considered a liar and must pay (Schach).

4. If R admitted in the presence of the court that he owed to B 100 zus and afterward he said, "I recollect that I paid the debt which I admitted, and here is my witness who testified the same, that I paid," the admirter is free (Tur).

5. If R said to B, "I loaned you 100 zus in the presence of so and so," and B said that he never borrowed it, and witnesses came and testified that they saw R counting out the money to B, and they did not know for what purpose the money was given to B, whether as a gift or as a loan, B is considered

a liar and he must pay the 100 zus, and if afterward B will claim that the money was given as a gift or for the payment of a debt, he is not believed (Schwuas 34).

6. If R hides witnesses behind the gate and they heard that he gave him the money as a loan, and B claimed that he never borrowed any money, B is considered a liar, and must pay. If, however, B claimed that he received the money as payment for his debt, but because it was hard to collect from him the debt, I, therefore, admitted to him anything he said because I did not see the witness, then B must take an oath (hises) and he is free (L. c. 34).

7. If R claimed 100 zus from B and B said that he never borrowed it, and witnesses testify that he did borrow the money, and afterward B claimed that he paid, he is considered a liar in his claim and he must pay, and the lender need not receive an oath; the same rule applies when the lender presents a note in the handwriting of B, and he denied that it is not his writing, and afterward it is found by comparing with another writing, or by witness that it is in his handwriting. Then he is considered a liar and must pay, and he is not believed that he paid until he produces a receipt or he brings witnesses that he paid in their presence (Tur).

8. If the defendant is considered a liar, the plain-

tiff is believed to collect the money without an oath (L. c.).

9. If a borrower claims that he never borrowed, and the court finds him liable to an oath, and before he swears he pleads that he paid or he is in doubt, and afterward he says, "I borrowed and I paid," he is believed, because he was not contradicted by the witness, only he tried to make good his oath, and these two pleas are to make himself free, and therefore, he must swear that the last claim is true, and he is believed (B. B. 39).

10. The defendant cannot be considered a liar except when the denial was in the presence of the court, i. e., R claimed before coming to the court 100 zus, and B said that he never borrowed it, and R said to the witness, "you will witness that B said that he never borrowed the 100 zus," and B was silent, and afterward B claimed that he paid, if he claimed that he paid before the claim is made, he is not believed; if he said that he paid after the claim is made, he is believed (L. c.).

11. If R claimed from B 100 zus in the presence of witnesses, and B said, "Yes," and the next day R claimed in the presence of the court his 100 zus, and B said that he paid it, B must receive an oath (hises) and he is free. If, however, B claimed that he never borrowed the 100 zus, and the witness testified that

yesterday he admitted it, then he is considered as a liar, and he must pay, because the admission of himself is more believed than 100 witnesses (Schwuas 38).

12. If B stated that he did not have anything in his hand, he is not considered a liar because that can be explained that he borrowed and paid (Tur).

13. If R claimed 100 zus from B, "that I loaned you by that post," and B answered, "I never passed that post," and witnesses testify that they saw B pass that post, but did not see that he loaned money, B is not considered a liar, because that which is not of vital importance in a loan cannot be remembered (Schwuas 34).

14. If R claimed 100 zus from B, and B said, "I paid you with such and such stock (cotton), and the market price was so and so, and R produced witnesses to show that the market price was lower at that time, and he demanded the balance, and B claimed that he paid the balance, or with the same stock or with other stock, B is considered a liar, because the price of the stock must be remembered; therefore, the lender is believed on the balance without an oath (L. c. 41).

15. If two litigants came to a court and one is found liable, and the judges say to one, "go and pay him," if subsequently the one claimed that he paid and witnesses testify that he did not pay, for instance,

that he was all the time with them, and they saw that he did not pay, he is considered a liar, and is not believed to say that he paid afterward, excepting when he pays in the presence of witnesses. If, however, the court said to one, "you are bound to give him this amount," and afterward the defendant claimed that he paid, and witnesses testify that he did not pay, he is not considered a liar, because at the command of the court you are bound; it is not sure that he must pay, therefore, in order to rid himself until the court is sure of its decision, he claimed that he paid (B. M. 17).

## CHAPTER LXXX.

### THE PARTIES CONCERNED AFTER THE TESTIMONY IS CLOSED CANNOT WITHDRAW OR CHANGE THEIR TESTIMONY.

1. If one makes his plea before the court and he is found liable, he cannot make another plea to contradict the first plea. If the other plea is only to explain the first plea and does not contradict it, it is permitted (B. B. 31).

2. If the party can win with the first plea he can withdraw and make another plea and win with the other. If, however, witness comes and contradicts the first plea, he is not believed in the other plea, ex-

cept when he gives a good reason for the change (Tur).

3. It is an opinion if the plea is written in a note it cannot be withdrawn or changed, even though he gives a reason and he is not contradicted by witnesses, and the pleas must be written and shall afterward not be withdrawn or changed (Ramo).

## CHAPTER LXXXI.

1. If R claimed 100 zus from B, and B admitted same, and the following day R claimed the 100 zus, and B replied it was only said in a joke, B is believed and must take an oath to prove the same (Sanhadrin 29).

2. If, however, B at the time when he admitted the 100 zus was on his deathbed, and afterward he claimed that the admitting was a joke, he is not believed, because on a deathbed no one is in the humor of joking (B. B. 175).

3. It is an opinion that if R seized the certain amount of the loan from B, although in the presence of witnesses, R does not have to return same and B is not believed that the admission was on account of jokes (Tur).

4. The plea of joking cannot be believed except when a demand was made previously. If, however,

nobody demanded and the borrower himself admitted that he owed 100 zus to R, he cannot claim afterward that it was all a joke (Tur).

5. If subsequent to the admission of B, R said to the witness, "You be the witness," or B said to them, "You be the witnesses," afterward B cannot claim it was a joke, he can merely be believed to claim that he paid (L. c.).

6. If R admitted in the presence of two witnesses that he owed 100 zus to B, and it is understood that the admitting was in a correct way, and not as wasteful words, even if he does not say, "you be the witness," and in the absence of the plaintiff, witness's testimony can be taken into consideration, and he is bound to pay through them (Rambam).

7. If one admitted in the presence of witnesses and others heard that he admitted in their presence, even though the first witness is absent, and the others testify that they heard that he admitted before the witnesses, he is bound to pay (Tur).

8. If one admits in the presence of one witness, the admitting is legal, either to be bound to receive an oath to contradict the witness or to pay (L. c.).

9. If R hides witnesses under the fence and claimed 100 zus from B as a loan, and B said, "yes," and R said, "kindly admit the loan in the presence

of witnesses," and B replied, "I would like to do this, but I fear that perhaps you would compel me to pay at once," and the hidden witness heard the whole argument, and B claimed that his answer was a joke, he is believed (Sanhadrin 29).

10. If no one claimed, but B admitted in the presence of witnesses that he owed 100 zus to R, and when R claimed the 100 zus B answered that he never borrowed it, and the admission was on account of not appearing wealthy, he is believed, whether he is rich or poor, or whether he was in a healthy or unhealthy condition he is believed.

11. If the plaintiff was present at the time of the admission, he is not believed to say that the admitting was on account of not appearing rich. Another opinion states that he is believed (Tur).

12. It is an opinion that if the admitting was on account of the demand of the plaintiff, the defendant is not believed to say that the admitting was on account of not appearing as rich (L. c.).

13. If the defendant admitted and wrote in his handwriting that he owed 100 zus or made a form of agreement (kynon), or it was in the presence of three parties, the defendant is not believed, when he pleads that the admitting was a joke or that he shall not appear as rich (Tur).

14. If R admitted to B that he owed him 100 zus or B delivered a note with witnesses that he owed him 100 zus, and afterward it is found that it was a mistake, the admitting is void (Gitin 14).

15. If R admitted before a court of three judges that he owed 100 zus to R, whether he admits of his own accord or admits by the demand of the plaintiff, the admitter cannot withdraw his admission, except in the same second (Tur).

16. If R claimed an article from B and B answered, "the articles do not belong to you but to C," even if it was admitted in the presence of the court, the admitting is not valid, for C to be as evidence to recover the article from B; it is an other opinion that the admitting is valid, but B can say that he made an error in the admitting, and the article belonged to others (L. c.).

17. If R said to B, "you owe 100 zus to C," and B said, "yes," and R said to two persons, "you be witnesses," the admitting is valid; and when C came to claim the 100 zus B cannot say it was a joke or appear as rich, although R has no power of attorney from C, and although R did not say to the persons, "you will be witnesses." B cannot plead to C that was as a joke (L. c.).

18. R said to B and C, "you owe me 100 zus," and B said, "yes"; C was silent; R said to two per-

sons, "you act as witness," and B was silent, the admission is valid for B but not for C, even though B and C received the loan in partnership, the admitting by one cannot bind the other (L. c.).

19. If R said to B, "you owe me 100 zus," and B answered, "here is 50 zus on account, and R did not say to the two present, "you act as witness," B can then claim of the 50 zus which were not given that was admitted as a joke, and the 50 zus that were given cannot be returned to B (L. c.).

19a. If R was on his dying bed and B admitted that he owed him money, B must pay and cannot be free with the claim that he admitted, would not appear as rich (L. c.).

20. If R said that B had by him 100 zus and did not appoint witnesses, but swore that his admitting was true, and afterward when B claimed the money, R said that the admitting was on account of not appearing as rich, and he swore falsely, or he claimed that he forgot it, and he swore because he thought he owed him, but that now he recollects that he did not owe him, his word is not taken into consideration and he must pay (Tur).

21. If the lender admitted to the borrower in the presence of witnesses that he received on account of a debt a certain sum of money, whether it was a debt with a note or an oral one, the admitting is valid and

he cannot be free with the plea that he said it in a joke or not to appear as rich. The same rule applies if one releases a debt in the presence of witnesses even if he did not ask them to act as witnesses, it is valid and the borrower is free (L. c.).

22. If R and B started a business in partnership, R was the manager in the business and B was a silent partner, and R gave B a certain sum of profit each year, and when the partners decided to dissolve the partnership R claimed that the business was not profitable, and wished to deduct the money given as profit from the fund, if R can prove his claim by witnesses or by record books, or other evidence, he can be believed, and if he cannot prove through the same witness, and if R admitted or witnesses testify that the money was given as profit, there are two opinions, one stating that R must pay the entire fund to B, and the money received as profit cannot be deducted, and the other stating, even if R gave the money to B, although in the presence of witnesses as profit, and did not ask him to act as a witness, then R can take an oath that the business was not profitable and everything which was given must be deducted from the fund (Tur).

23. R gave 100 zus to B and C for business, and they made a note and swore to give R one-half of the profit, and afterward R demanded his money, and

they paid him the 100 zus, and when R demanded the profit, they replied, "we profited so much and no more," and R said to B, "you said to me that your profit was 50 zus," and B answered, "I never said anything of the kind to you," and with respect to the note which R had from B and C, and there was no receipt for the 100 zus so they were forced to give him 25 zus on account of profit, and afterward C came and claimed from R that he took money from him illegally, because the business was not profitable. The right is with R (L. c.).

24. R claimed from B that he gave him money for business, and a condition was made to pay him a certain sum of profit each year, and several years elapsed and R did not collect anything from B, and B claimed that no such condition was made; B is free even from an oath.

## CHAPTER LXXXII.

1. If a lender presented a note for collection and the note cannot be acknowledged, and the borrower admitted that he borrowed the money, and commanded the note to be written, but he paid it, he is believed, on account of migy, because he can say that he never borrowed it and it is false (Kesuboth 19).

2. If subsequently the lender found witnesses to

acknowledge the note, then he can collect the same (Rambam).

3. If the note is acknowledged and the borrower claims that he paid all or a part of it, and the lender claims that he did not pay anything, if belief to the lender is written in the note, the borrower is not believed. Even though the borrower demanded an oath from the lender he can collect without an oath (Tur).

4. If there is another debtor from whom the borrower borrowed at a later date than the first debtor, and there is not sufficient funds for both, then the first debtor must swear to the latter that he did not receive anything on account of his debt (L. c.).

5. If the borrower claimed that he paid the note, he is bound to swear that he paid that, and if he made a proposition to the lender, that he shall swear and receive the money, the court must command the borrower to deposit the money, and afterward the lender can swear and receive the money. If the borrower is unable to deposit the money, then the borrower must swear that he is not in a position to pay, and when he will be able to pay, the lender will swear that he did not receive anything on account of his note and the borrower will pay him (L. c.).

6. If the borrower is found to be a liar in this transaction of the note, for instance, the borrower said he never loaned, and witness testify that he did

borrow, and they acknowledged the note and the court found him liable to pay, he cannot demand an oath from the lender that he did not receive payment, even if it is not written belief on the note, because anybody who says that he did not borrow it, is sure that he did not pay (L. c.).

7. If the lender died, and the heirs presented the note for collection and the borrower claimed that he paid same, the heirs must take an heir's oath and receive the money; the oath must be in this form, that the father did not command us and we did not find any receipt that the note was paid (Schwuas 45).

8. If the borrower claims that the note was made on a condition, "that if I fulfill it I will be free to pay, and I fulfilled," and the lender claimed that no such condition was made; if in the note is written that the loan is made without a condition, the borrower is not believed, and if it is not so written, then the lender must swear and he can collect the money; even if belief to the lender is written in the note, he must also swear. If the lender admitted that the note was made on a condition, but he claimed that the borrower did not fulfill the same, and the borrower claimed that he did fulfill the condition, and if the lender cannot prove that the condition was not fulfilled, the borrower must take an oath (hises) and he is free (Tur).

9. If the borrower proved with witnesses that the note is made with a condition, even the same witnesses who signed the note, and they state that the same is made on a condition, even though other writings are found from the same witnesses, which can be compared with their signatures, the borrower is free without an oath (L. c.).

10. If the borrower claimed on an acknowledged note that a part of it was paid, and the lender said that it was not paid, and the witness testified that all was paid, then the borrower must swear that he paid a part, and the balance can be collected from unsold property, but not from the sold, because the buyers can claim that they believed the witnesses who testified that the note was all paid. If the borrower later claimed that he recollects that all was paid, he is believed (B. B. 128).

If it is written in the note that the borrower give belief to the lender like two witnesses, the lender can collect the whole debt from the borrower's unsold property; if the borrower is unable to pay the debt, if it is permissible to collect from conveyed property, there are two judicial opinions, one stating that if the belief was written before the transaction of the sale is made, he can collect from them; another states that even so, the lender cannot collect from the conveyed property (Tur).

### CHAPTER LXXXIII.

1. If R owed two debts to B, each one containing 100 zus and both fell due at the same time, and R gave 100 zus to B without specifying for which, or even if it was specified that the same was given on the debt, for instance, one debt is made with a surety, and the other is without surety; the lender claimed that he received the 100 zus for the debt that is without surety, the borrower claimed that he had in his mind to give the money in settlement of the debt with a surety, the right is with the lender (Tur).

2. If the lender presented a note for collection and acknowledged it, and the borrower claimed that it is a trust note and the lender says yes this is a trust, but I had a good note before, and I lost it, then the borrower must take an oath (hises) and he is free (B. B. 32).

### CHAPTER LXXXIV.

1. If R claimed a note from B for 1,000 zus and B claimed that he paid it all, and R admitted that he received a part of it, then R must swear that he did not receive pay for the balance, and afterward he can collect; even if there were witnesses at the time of payment, or even if a receipt was made for part of the payment, R must swear for the balance (Kesuboth 87).

2. If the loan was made for a certain time and the expiration of time is not due, even the lender received a part of the note, he can collect the balance without an oath, except when the borrower demanded an oath from the lender (B. B. 5).

3. If R came to collect a note from B for 1,000 zus, the amount for which it is written, and the borrower claimed that he paid it all, and the lender said that he did not receive anything in payment, he merely borrowed 500 zus from him on that note, and said "you trusted me that I would not demand more than 500 zus, the lender can collect without an oath except when the borrower demands an oath (Kesuboth 87).

4. If the lender claims that he received nothing in payment for that note, "I merely loaned you 500 suz," and the witness made an error and wrote 1,000 zus, then the borrower must swear a hises and he is free, because the lender admitted that the witnesses testifies falsely (L. c.).

5. If one witness testifies that the note is paid, then the lender can receive payment only with an oath. If it is after the expiration of the due date of the note, but if it is during the unexpired time, the lender can receive payment without an oath, except when the borrower demands an oath from the lender (L. c.).

6. If one witness testifies that the note is paid and the lender died before he received the oath, his heirs cannot collect the note because no man can bequeath to his heirs such money which he cannot collect without an oath (L. c.).

### CHAPTER LXXXV.

1. If R presented B's note for collection and B showed a bill of sale that he sold him a field after his note was due, and B said that "if I owed you money why did you sell me the field, you should have received the money on account of your debt," and that is proven the note is false. If the custom in the locality is that the money must be given first and then the bill of sale is written, then the rights are with B, because he had no right to draw up the bill of sale after receiving the money, and, therefore, B is believed to say that he paid and had a receipt and lost it. If the custom is to write the bill of sale and give the money later, then B is not believed, because R can say "I sold you the field purposely in order to have something from which to collect my debt (Kesuboth 110).

2. R brought a note for collection to B, and B brought a note for collection with a later date on R and the note from R is due before B made the loan to R, and B claimed that the note from R is false, and

the evidence is, if your note is valid, "what reason had you to borrow from me as you could have collected the same for your debt. B's claim is effective (L. c.).

3. If R's note from B was dated for a length of time, *e. g.*, for ten years, and B's note from R was for five years, each one is entitled to collect when his note becomes due (L. c.).

4. If R owes 100 zus to B, and B owes 100 zus to R, and the time of payment of the two debts is alike, the law considers that each one must stand by his claim and one debt must be deducted from the other (L. c.).

5. R loaned to B 200 zus and B loaned to R 100 zus and B with R was tried by the court for the 100 zus and R is found liable for the 100 zus and R said to B, "You owe me 200 zus, deduct 100 zus from it and give me the balance," and B said, "My trial for the 200 zus is not yet decided by the court and I think I have evidence to prove that I do not owe you anything and your trial is decided for the 100 zus, therefore you pay me the 100 zus and then we will wait for the decision of the court; the right is with B (Rasbo).

## CHAPTER LXXXVI.

1. R owed B 100 zus and B owes C 100 zus, the court can collect from R the 100 zus and pay C, whether C owed B at the same time that B owed to R or C made the loan afterward, or whether both were with notes or oral debts, whether one was with a note and the other oral, or else the money was for labor or anything that was owing to him, the court can attach all (Kesuboth 19).

If money is given to the borrower as charity for support of his family, such money cannot be attached for a debt (Kidushen 15).

2. This rule applies only when B is unable to pay the debt, and he received the oath that he had no other property besides this debt. However, if B has some property in this country from which the debt can be collected, the court cannot collect from R for C (B. K. 40).

3. Even if B is unable to pay B cannot be forced to collect from C and give it to R. R must take the trouble himself and go to C to collect (Tur).

If B claims that C's note is in trust or that he is paid, he is not believed to do damage to R (Tur).

4. It is an opinion that if B has money in storage with C as bailee, the court has the right to attach and force C to pay to R with the cash, but cannot force him to take real property for the debt (Rosbo).

If one is in contempt of court and refuses to come to the trial or comes and refuses to abide the decision, and the court attaches money which is found in the hands of another bailee, and he violates the commands of the court, and returns the money to the recalcitrant and the court cannot find other funds from which to collect, the bailee is bound to pay the lender the amount returned to the recalcitrant (Tur).

5. B has no right to release or give an extension of time to C because the obligation of C belongs just now to R (L. c.).

6. If C after the command of the court that he shall pay to R, pays to B, he is bound to pay to R again (L. c.).

7. The transfer cannot be made without the court. If R attached the money by himself the same is void (Tur).

8. If B died and he left heirs and C claimed that he paid, the heirs must take an oath, and they can collect from C, and if R had a note of his debt he can collect the same money from the heirs.

9. R made an oral loan to B, and B made a loan to C with a note, and C sold all his property and R came to collect from the buyers of C with the power of the note that B had from C, and B admitted to R that he did not pay, R is entitled to collect (Tur).

10. R has a note from B and B has a note from C, his brother, and R came to collect from C for B and C claimed that "My brother did me a favor and he made me a loan to encourage me in business and made a condition with me that he would not force me to pay except when I want to," even the court understands that the claim is somewhat true, but the condition is not written in the note; R is entitled to collect for that debt from C (L. c.).

## CHAPTER LXXXVII.

1. If R claims from B money, or an article which he could plead that he never received same, or that he received and returned it, or that he bought this and admitted a part of them, he is bound to take a Thora oath of the part denied, and if the bailee denied all, and one witness contradicted him, and even the plaintiff did not know of the claim, but only through the witness, he is bound to take a Thora oath (L. c.).

2. If, however, the bailee denied all and nobody contradicted him, he is free from an oath of the Thora. Either that was a loan or a storage, but he must take an oath (hises) (Schwuas 38).

3. If R says to B, "You owe me 100 zus," and B says, "I don't owe you anything," B must take an oath (hises) and he is free (L. c. 40).

Even if B admitted a part of this loan and the ad-

mitted part he put in cash, in the presence of the court, and the balance he denied, he must receive only an oath (hises) and he is free (B. M. 4).

4. If B promised to give the admitted part, for instance, he says that he has money in his home and that he will go home and bring it, or he wishes to give a pledge for it, that cannot be considered as cash and he must receive a Thora oath. Another opinion stated that a pledge can be considered as cash, because even a note is also considered as cash (Tur).

5. If R claims from B two vessels and B admitted one and he says, "Here is your vessel," and R claimed that this vessel was used and now it is worthless than before, and if B admitted this claim, this is not like (hilich), it is not considered as cash and therefore he must take a Thora oath (Tur).

6. If R claimed from B 200 zus and B admitted such 100 zus, which it is impossible for him to deny, because there is a judgment which was given on this 100 zus, that cannot be considered as admitting a part of the claim because that cannot be denied on account of the judgment, B must take an oath (hises) of the other 100 zus (Tur).

7. If the judge understood that B committed perjury with them, that he put the admitted money in cash in order to be free of the oath of the Thora, he is bound to take an oath of the Thora (Tur).

7a. If R claimed from B 100 zus and a vessel and B says, "You haven't anything with me but only the vessel, and here it is," and R says, "That is not my vessel," then B must swear an oath (hises), and include in his oath that is the same vessel which belongs to R and he is free (Tur).

8. If B admitted that the vessel is not R's, but it is exchanged, but that this vessel is of the same value as his, then B must receive an oath (Thora) because it is not (hilich).

9. Refer to paragraph 4 on account of the opinion, that if a pledge is like cash and if this vessel has the same value as his, it is the same law of pledge and therefore B must take an oath (hises) and he is free (L. c.).

10. There are three kinds of oaths: (1) Thora oath. If the defendant admitted a part of the claim; (2) if the defendant denied all and one witness contradicted him; (3) if a guardian claims that he lost the article entrusted to him, he must receive an oath even though the bailor is uncertain in his claim (Tur).

11 It is a rabbinical oath and they are called court oaths and there are two kinds: (1) one of them can be found through a claim and denied; for instance, the employee claims his wages and the employer denies it; then the employee must take an oath

and he can collect. (2) If the lender brought a note for collection and the borrower denied all, and the lender admitted that a part of it was paid, then the lender must take an oath before he can collect the balance of the note, and there is another oath; for instance, there are two partners in one business, one silent and the other inside; the inside partner claimed that the business was being run at a loss and he must receive an oath, etc. There is another oath which was started by the enactment of the last generation by the talmudical wisemen by the name hises, even if the court found, bound to take this oath, he is not called a court oath (*Tur.*).

12. This is the difference between an oath of the Thora and a rabbinical oath. If one is found liable to a Thora oath and he refused to swear, the court has the right to take his fortune and pay to the plaintiff as much as he claimed, and one who is bound by a rabbinical oath, and he refuses to swear, if he is from the receiver, the oath shall be free of the claim; for instance, they must receive an oath of a claim that is uncertain, or an oath (*hises*) he can be excommunicated, and if after that he refuses to swear, the court has the right to punish him with flagellation, but they have no right to collect from his fortune (*Schwuas 41*).

13. There is an opinion if one is found bound to receive a rabbinical oath, if he seizes the value of the

claim from the defendant and refuses to swear, the court cannot recover it from him (Rief).

14. The Thora oath, if the defendant says to the plaintiff, "Instead of my swearing to be free you swear and receive the money," that cannot be done without the consent of the plaintiff (Tur).

15. If the plaintiff according to law must swear and take the money, he is not permitted to overthrow the oath of the defendant without his consent and the same rule applies to the oath of the partner, because the oath is founded on an uncertain claim, therefore the oath cannot be overthrown (Rambam).

16. An oath hises can be overthrown from the defendant to the plaintiff; for instance, if R claimed from B 100 zus and B denied all of them, then by the law B is bound to receive an oath, hises, and he is free; B can overthrow the oath and say to R: "You swear instead of me and take the 100 zus" (Rief).

17. Even the oath of hises cannot be overthrown if there are additional claims combined in this oath (L. c.).

18. Although the person swearing and receiver of the money cannot overthrow the oath of the defendant without his consent, if the plaintiff said, "I don't want in the enactment what the wise make in my favor, but I will be like all the plaintiffs and the de-

fendant should swear an hises and be free," that is effective. If after that the defendant overthrows the oath of the plaintiff, that is effective, and if he refuses to swear, the defendant is free (L. c.).

19. If one is found bound to a Thora oath, and the defendant is from then the suspected to receive an oath, then the plaintiff must swear and receive the money; if the oath was a rabbinical and the defendant is suspected, he is free without an oath (Schwuas 44).

20. When one is bound to receive a Thora oath, when he swears he must keep in his right hand a bible or frontiless or Five Scrolls of Law; the same rule applies to the court oath, but when one swears an heses oath he need not then keep a holy thing in his hand (L. c. 38).

21. If R claims from B 100 zus and B denies, and he receives an oath Heses without holding in his hand a holy thing, and subsequently the plaintiff brought one witness to contradict the defendant, and just now he is bound to receive a Thora oath with holding a holy thing in his right hand, he is bound to do so (Rief).

22. The one receiving the oath must swear in the name of the Lord and must be standing; however, if he swore when he was sitting he must not swear again (Schwuas 39).

23. If, when the trial started, both swore that they shall plead the truth, and subsequently one is found liable to an oath, it is an opinion that he cannot be free with the first oath (Rasbo). Another opinion holds that he can be settle with the first oath, but then the court must recollect him that he swore to tell the truth (Rambam).

24. The form of the oath, the swearer must hold the Five Scrolls of Law in his right hand or other holy things like the Bible or Frontiless, standing, and swear as follows: "I swear in the name of the God of Israel that I do not owe to so and so anything." Or, the judge says, "I make you swear in the name of the God of Israel that you do not owe anything to so and so," and the defendant must say "Amen" (truth) (L. c.).

25. It is an opinion that in the last generation they suspended the law to swear in the Name of the Lord because the punishment for false swearing is severe, and it started a custom to swear with curses (Tur).

26. The oath is legal in any language which the swearer understands, and before he starts to swear the judges must intimidate him and must say to him: "You know that all the world was shaken at the time when the Lord had commanded 'thou shall not swear falsely,' and for that sin you and your entire family

can be punished and all the Community of Israel because they surely each one for the other." If he says that he will not swear he must pay the claim of the plaintiff. If, however, he says that he will swear, the audience standing near him must command each other to move away from the wicked (Schwuas 39).

27. The recipient of the oath, either a thora oath or a rabbinical oath or a heses, has the right to put a ban before he takes the oath of which he claims from him a thing that he does not owe, and make him swear for nothing, and the plaintiff must say "Amen" (Tur).

28. The oath must be in the presence of the other party or in the presence of the witness. If the plaintiff is uncertain of the claim, but he knows through the witness, and there is no necessity to swear in the presence of the plaintiff, and if the defendant swore in the absence of the other party, and the oath was given in a legal way and by the permission of the court, he is free.

29. If one makes additional claims to the other, one oath is enough for all the claims. If one claim, he is bound to swear a thora oath and for the other claim he must make a rabbinical oath, then he must swear a thora oath and must include the other claims in the oath (Sanhadrin 81; Rambam).

20. If R makes a claim to B that the court found him bound by an oath and says, "I want you swear to me," and R says, "I swore already," R must prove he is innocent by evidence (Ramo).

31. If R claims 100 zus from B and B denies all, and the court found B bound to take an oath, he has, and he already swore, and subsequently B admitted a part of the loan, if the admission was as repentance, because he feels sorry for having sworn falsely, he is free from the balance, and if the admission was not caused by repentance, he must receive an oath for the balance, because a man cannot make himself wicked to be ineligible to take an oath on account of his own testimony.

32. If B denies the entire claim and one witness contradicts him and he receives an oath to contradict the witness, and subsequently the plaintiff brought another witness who testified the same as the first, that B owes the money, the witness' testimony can be combined with the first one and B is bound to pay the entire claim, even though he had already sworn and B lost his reputation and had aroused suspicion as being a perjurer (Tur).

33. Even though B had already sworn and became free through the court, if R should seize the amount of 100 zus from B and claim that the seizing was on account of the claim to which he swore and

which he says was false, if the seizing was without witnesses, the right is with R account of (migy) and the amount cannot be recovered, and R must take an oath hises (L. c.)

34. If R claimed that B owed him a debt and that he had a note, but he lost it, and B claimed that he paid same, or that he does not owe anything, and B swore, and afterward R brought witnesses and they testified that he loaned the money, or brought the note and acknowledged same, B must pay the debt after R will take an oath that he has not received pay, and B is not suspected of perjury as false swearer because the witness did not testify that he did not pay (L. c.).

35. If three plaintiffs have one claim against one defendant, and he swore to one, he is settled with them one oath from the others (Kesuboth 94).

36. No oath can be granted to the one who is eager to swear.

37. If the judge finds out that the claim is false, no oath shall be granted of the claim (Tur).

38. It is an opinion that if one said the name of the Lord for nothing, he is ineligible to receive an oath, and the other party must swear and receive the money for the claim (L. c.).

## CHAPTER LXXXVIII.

1. An oath can only be granted when the claim is not less than two moeas and one perute, and the defendant denied the two moeas and admitted the perute. If, however, the claim was two moeas and one perute, and the defendant admitted in two perutes, an oath cannot be granted because the denial is less than two moeas, or if he admitted one-half perute, no oath can be granted on that claim because the admission is less than one perute.

2. The weight of one perute is like a half of a barley clear silver. The weight of two moeas is like 32 barleys clear silver (Tur).

3. If R claimed merchandise from B and B admitted a part of it, then the same must be appraised; if the value of the admitted part and the denied is worth two moeas and one perute, then an oath can be granted (L. c.).

4. This rule applied only when the claim was money or food or merchandise; however, if the claim was for vessels, even needles, and the price of ten needles is only one perute and the claim is for two needles, and he admitted one and denied the other, the admirer is bound to take an oath (Schwuas 40).

5. If the claim was silver and vessels and he admitted the vessels, but denied the silver, if the value

of the silver is two moeas, he is bound to take an oath; if not, he is free. If he admitted the silver and denied the vessels, if the silver is worth a perute, he is bound to take an oath. This rule of the necessity of the value of the claim is held by the oath of admission of a part of the claim; however, by the oath of one witness the value of the claim is not necessary, even if he denied one perute, he is bound to take an oath (Schwuas 40).

6. The guardian's oath as to the value of the claim is not necessary, and although he gave him in storage one perute or the value of a perute, and the guardian claims that it is lost, he is bound to take an oath (Rambam). Another opinion stated that even the oath must have the value of two moeas. The oath (heses) can be administered even to the value of a perute (Tur).

7. The oath of admission as a part of the claim cannot be granted except when the admission is of the same kind as the articles claimed; for instance, if the claim was a ton of wheat and the defendant admitted a bushel of peas, an oath cannot be granted; if, however, the demand was fruit and the borrower admitted a bushel of peas, he is bound to take an oath, because the peas are included in the name of fruit (Schwuas 38).

8. If R claims the value of 100 zus from B with-

out specifying which articles, and B admitted something, an oath can be granted for the balance (Tur). If the claim was cash 100 zus, and he admitted in the value of 50 zus, no oath can be granted (L. c.).

9. If R claims a ton of wheat from B, as well as a ton of barley, and B admitted the one, he is bound to return the one admitted and to take an oath for the other. However, if the claim was for wheat and he admitted a ton of barley, he is free of the value of the barley, even though the witness testified about the barley, because the plaintiff released the claim for the barley; and he must receive an oath (heses) of the wheat (Schwuas 40; B. K. 35).

10. It is an opinion that this rule applies only when the claim for the wheat was on a certain day and on a certain hour, because if it is true that he loaned him wheat and barley, he would claim both, because it was at the same time; if he did not claim the barley, that is evidence that he does not owe him the same. However, if both claims were not in the same day and same hour, for instance, if the plaintiff says that the loan of the wheat was made after the loan of the barley, the defendant must pay him for the ton of barley (Tur).

11. If R claims a ton of wheat from B and B says, "I don't know whether I owe you a ton of wheat or barley, there are two opinions, one stating that

he must swear an heses that he doesn't know, and he must pay for barley, and the other opinion stating that he is free even from paying for barley (Rambam).

12. If R claims from B ten full barrels of oil and B admitted ten empty barrels, no oath can be granted; however, if he says, "I have ten barrels of oil in your hands," or said "ten barrels full of oil," and the other admitted ten empty barrels or admitted the oil without the barrels, an oath can be granted because his claims are made for the two articles (Kesuboth 108).

13. If R claims from B 100 zus as a loan and B says, "I never borrowed from you, but you have with me 50 zus as bailment," an oath can be granted for this claim (Tur).

14. If R claimed from B 100 zus which he owed to his father and B admitted that he owed to himself 100 zus, B must pay the admitted debt and must receive an oath of R's father's claim, if the claim is certain.

15. If R claimed from B 100 zus and B admitted in 50 zus, and B claimed from R a ton of wheat and R admitted in a half ton, the value of which is 50 zus, each one is free from taking a thora oath because the admission is just like putting in cash, be-

cause each one owes the other the same amount; therefore, each one is free from a thora oath (Tur; see Chapter 75).

16. If R claimed from B 100 zus and B admitted 50 zus and the court bound B to take a thora oath and before B starts to swear, he says, "I don't want to swear, I will pay the entire 100 zus, but R shall swear that he had with me 100 zus"; and R claimed, "I will collect my money and after that I will swear to his claim," the right is with R, and B must take an oath or pay the 100 zus, and after that he can give an oath to R whether or not he collected from him money illegally (L. c.).

17. The law of taking an oath of admission of a part cannot be granted except when the claim and the admission is made with a measure or a weight or count; for instance, if the claim was for 10 denarim and the other admitted one denar, or one ton of wheat and the other admitted one bushel, or the claim was two pounds of silk and the admission was for one pound, then an oath can be granted (Schwuas 42).

18. However, if R claims "a full pocket of money I had with you," and B admitted 3 denarim or R claimed 100 denarim, and B says, "I did not count them because it was bound and anything which you left you can take," B is free of an oath of the thora (L. c.).

19. If R claims from B a full house of food which he has in B's hands and B answers "you have in my hands only ten tons," or R claims ten tons and B says, "I don't know how much there were because I did not measure them, and anything you left you can take," B is free from an oath because it was not measured. If, however, R claimed, "this house full of food up to the ceiling," and B says that it was not up to the ceiling, but up to the beginning of the windows, and the food was spoiled on account of his neglect, he is bound to take an oath. If the food is not spoiled no oath can be granted because the admission is as like if he put in cash. (See Chapter 75; Schwas 42.)

20. If R claims from B a big candle-holder and B admitted a small one, he is free from an oath, because it is not that same kind. If the candle-holder can be dissembled of parts and he admitted in small one, he is bound to take an oath.

21. If, however, the claim was made for a candle-holder of ten pounds and he admitted for a candle-holder of five pounds, he is bound to take a thora oath (L. c.).

22. If R claims from B a big girdle and B admitted a small one, he is free of an oath because it is not the same kind. If the girdle was made in parts and can be dissembled, an oath can be given (L. c.).

If R claimed from B a window-curtain or a tent of the length of 10 yards, and B admitted a window-curtain in the length of five yards, an oath can be granted (L. c.)

23. If R claims from B 100 zus which he loaned him in the month of Nesom and 100 zus in the month of Tisri, and B admitted one of them, he is bound to take an oath (thora) of the other, even though they were not in the same time; it is as if of one kind (Tur).

24. If R claims from B a note in which was written Sloenm or Denarem, without specifying how much, the lender says that it was five and the borrower claims that it was two, the borrower is not bound to take an oath for the balance, because without his admission the meaning of the note is not less than two, and even if the borrower says three, he is free from an oath account of migy, because he can say it was only two (B. M. 4).

25. Therefore, if R says to B, "you or your father have with me 100 zus and I paid you half," and B says, "I personally do not remember, but you have reminded me and I know that you didn't pay me anything," R is free even from an oath (heses) because it is as like though he had returned a lost article (L. c.).

היה יודע לו עדות עד שלא נעשה חתנו ונעשה חתנו פסול אבל כי יודע לו בעדות עד שלא נעשה חתנו ונעשה חתנו ומטה בטו כשר זה הכל כל שתחלו וסופה בנסיבות כשר.

(ב"ב קכ"ח)  
הבא על העורוה או על הזוכר פסול לכל עדות שבועלם.

(ח"מ ס' ל"ד — סנהדרין כ"ו)  
אמר ר' יוסי פלוני רבעו לאונסו הוא ואחר מצטרפין להרנו לרצונו רשות הוא והتورה אמרה אל תשע עד רבא אמר אדם קרוב אצל עצמו ואין אדם ממש עצמו רשות.

(סנהדרין ט' — ח"מ ס' ל"ד)  
עתים חלים עתים שוטה כשהוא שוטה כשותה לכל דבריו וכשהוא פחק כפקח לכל דבריו.

(ריה"ש כ"ח)

הנרים אין להם קרובה אפילו שני אחיהם תאומים שנתנוiron  
מעידים זה זהה דרג שנתנוiron בקטן שנולד דמי.

(יבמות כ"ב)

עדים רבים שנמצא אחד מהם קרוב או פסול עדות בטלת.

(מכות ז')

אלו הן הפסולים המשחיקים בקוביא ומלו ברכבת ומספרחי יונים וסוחרי שביעית אמר ר' יהודה אימתי בזמן שאין לו אומנות אלא הוא אבל יש לו אומנות שלא הוא כשר.

(סנהדרין כ"ד).

ת"ר האוכל בשוק ה"ז דומה לכלב ו"א פסול לעדות אמר רב אידי בר אבון הלהה כי"א.

(קדושים מ')

אמר שמואל השותפים מעידין זה על זה.

(ב"ב מ"ב)

שלח ליה רב נחמן בר רב הסדא לרבי נחמן בר יעקב ארמים מעיד או אינו מעיד והוא יתיב רב יוסף קמיה אל' הכי אמר שמואל ארמים מעיד והתנייא אינו מעיד לך' ק הא דאייכא פירא באירועה הא דלייכא פירא באירועא.

(ב"ב מ"ז)  
האומר לנו מה לעניינו עירינו אין דניון בדיוני אותה העיר ואין מביאין ראה מאנשי אותה העיר.

(ב"ב מ"ג)

### שאלות ותשובות.

על אחד שהי' חיב לחייב מנה והקנה נכסיו לקטן כדי להבריחם מב"ח ראוי לצבור לנזר בפני בעל פרצימן כדי שלא ילמדו לעשות כן ורשאין דהפרק ב"ד הפרק רשב"א הובא בב"י ס"ג.  
עד החתום בשטר אם יכול לעשות דין על אותו תביעה רבינו ירוחם והבעל העיטור פומליין אותו להיות דין וחרשב"א מכשירו להיות דין ב"י ס"ז.

אם יזמין עשיר לדין לב"ד הנadol יסדר טענותיו לפני דייני עירו ואם יש ממש בדבריו יאמרו לו שילך עמו ואם התובע רוצה לילך לפני דיינים גדולים מוכחים לפניו את הנטבע להלוך עמו.  
כתב מהרי"ק שורש י"ד הדין לפעמים לא רצה ליתן להנטבע זמן אחר לבדר טענותיו עד אשר יתן ערב بعد התביעה והכל לפי ראות הדיין.

כל דין המתמנה בשבייל כספ' וזהב אסור לעמוד לפניו ולא עוד אלא שמצוה להקל ולזולזל בכבודו.  
ירושלמי סוף בכורים רבינו מיקל לאילן דמתניין בכספ' ר'امي קרי עליהן אלהי כספ' אמר רבוי ואשיה וטלית שעלו כמרדעת של חמוץ.  
(טור ס' ח')

מי שיש לו דין על חייבו והנטבע מוחזק בהחפץ אין אמורים לו להוציאו ולהניחו בידי שלישי ואה"כ ידונו דכל מילתא דעתידא לנלו לא מתריחנא ב"ד דילמא יזכה הנטבע ונמצא מוחזק בדיין.

(ש"ג ס' ע")  
בשם הרם"ה מי שאומר כתבו לי מי זה טעם דעתוני או הילך לכדה"ג או לכית הוועד לסטור הדין גובין ממנו בתועך עד שייתברר ואין ממתניין לו וראוי מפרק חזקת רב כהנא שקל בידקה באירועה אזול אהדר גודא באירועה שלא דידיה אתה لكمיה דרי' אזל איתה תרי סחדי ח' א' תרתי אוציותה עאל וה' א' תלת אוציותה עאל אל זיל שלים תרתי מגו תלת אל' כמוון קרשב"א דתנייא ארשב"א לא נחלקו ב"ש וב' ה' על שני כתיב עדים שאחת אומרת מנה ואחת אומרת מאותים שיש בכלל מאותים מנה על מה נחלקו על כת אחת שאחד אומר מנה ואחד אומר מאותים שב"ש אומרים נחלה עדורין וב' ה' יש בכלל מאותים מנה אל' וזה מיתינא איגרתא ממערeba אזין הלכה קרשב"א אמר וכי תיתי.

(כ"ב מ"א)  
ואם יראה לדין שב"ד חושדו שנוטה הדין כנדון ציריך להודיעו מאיזה טעם דנו אפילו אם לא שואל כדי שהיה נקי מ"ד ובישראל וראוי מהנהו תרי כתאי דעתידא עימקא בהדי הדדי אויל חד מניחו פליג זווי בלא דעתא דחבריה אותו لكمיה דבר פפא אל' Mai נ"ט הכי א"ר נחמן זווי כמוון דפליג דמי לשנה זבון חמורי בהדי הדדא קם אידך פליג לייה בלא דעתיא דחבריה אותו لكمיה דבר פפא אל' מאן פלא לך אל' קא חזינה דברת רידי קא אתי מר אמר רב פפא כה"ג ודאי ציריך לאודעה זווי מי שקיים טבן ושביק חפרין חמרא قول עלמא ידע דaicא דברים ואיכא דלא בסיסים.

(כ"מ ס"ט)



חַשְׁן הַמִשְׁפָט

# JEWISH CODE OF JURISPRUDENCE

TALMUDICAL LAW DECISIONS  
CIVIL, CRIMINAL AND SOCIAL.

By RABBI J. L. KADUSHIN

TRANSLATOR OF THE JEWISH CODE

PARTS I, II, III AND IV.

EDITED AND REVISED BY  
**RABBI GUSTAV N. HAUSMANN, Litt. D.**

אורים וחותמים

SECOND EDITION.

PART 2

BOSTON  
THE TALMUD SOCIETY  
1921

## INTRODUCTION TO THE SECOND PART.

Thou shalt make the Breastplate of Judgment and Aaron shall bear the name of the Children of Israel on the Breastplate of Judgment upon his heart when he goeth in (Exodus 28-15-29). This plate was only worn by the High Priest being also the Chief of Judges. The Talmud relates (Zvochim 81) that the "choshen mishpot" Breastplate of Judgment forgave the sin of a wrong decision. The Breastplate bore the Urim and Tumin, and all the names of the tribes of Israel were written on its stones. The duty of the High Priest was to keep the community in peace and to be organized well and that each should be friendly each other and shall sympathize with the fortunes and misfortunes of another. Therefore, he wore the Breastplate on his heart to keep advised how to use his influence and power over the community to keep it in good order and in friendly association. The Urim and Tumin were the master work of the Lord to teach the High Priest as the Chief of the Judges to render a correct decision, and to guard the people from all dangers, and during wartime, when the people applied to the Urim and Tumin, whether they should start a raging war or not, they received the correct answer by wireless (see Samuel 30-8, Yumo 73).

At a trial of a legal dispute, sitting as a judge, when the High Priest remembered that the Lord is with him, he must try to do the best that he could and he deliberated the decision several times before he rendered it, and with the help of the Lord he did not go wrong and always obtained the correct decision.

Therefore, I find my duty to publish this edition of the Jewish Code, a translation of the Talmudical Law Decisions named “Choshen Mishpot” (Breast-plate) collected from the Talmud by Rabbi Joseph Karro and so named in memory of the Breastplate, the instruments of justice, borne by the High Priest being also the chief of judges (see Code, Chap. 8) and may the Lord who bless the High Priest bless the readers of this book. This book contains *the Law* of courts, oaths, mortgages, surety, honoring the parents, teachers and learned men, charity, criminal actions, the law which is created by the Lord, and which is suitable for all classes and for all times, and who will study the law will be guarded against mistakes and misfortunes. Education is never too late, and you have never enough and the more you learn the more you should learn, and I pray to the Lord to give me a good heart to understand the truth of the Torah. I also sincerely pray that the world shall be full of knowledge, peace and happiness.—Amen.

THE EDITOR.

הלוּכוֹת שְׁבּוּעָה בְּכִ"ז

## CHAPTER LXXXIX.

### THE LAW FOR OATHS.

1. The burden of an oath according to the Laws of the Holy Scriptures lay on the defendant to swear and be free from payment, with the exception of the five following: (1) The employee; (2) the robbed; (3) the wounded; (4) the storekeeper, with his book; (5) when the defendant is suspected as a perjurer, then the plaintiff has the right to swear and receive the money (Schwuas 44).

2. An employee was working in the premises of the employer and he demanded his wages, and the employer claims that he paid for all the labor or for a part of it, even though the wages were one perute and the employer claimed that he paid, the employee must swear by holding a holy thing in his hand like a thora oath, and he can receive his wages; and even though the employer is a minor, the employee can swear and receive his wages (L. c.).

3. If the employee was a minor or was suspected as a perjurer, then the employer can swear and he is free (Tur).

4. If the employer died, the employee can collect from the heirs, if the claim is made in time for collection.

5. If the employee died, the heirs cannot swear and receive the wages (Ramo). The employee is believed with an oath only when the employee has witnesses that he in their presence hired him and worked for him. If, however, there are no witnesses for them, and the employer can say that he never hired them, he is believed on account of migy, to say that "I hired you and paid you," and the employer must take oath (heses) and is free; and if he admitted a part of the claim, he must take a thora oath (Schwuas 45).

6. It is the opinion that if the employee was hired by the employer, although in the presence of one witness, and the employer claimed that he paid, he must take a thora oath (Ramo).

7. If the employee claims his wages after the time is overdue, even though he was hired in the presence of witnesses, the employee must bring witness to prove his claim; if he does not bring witness, then the employer must take an oath (heses) and he is free (B. M. 111).

8. The proper time for a worker to collect his wages is: A day laborer has the right to collect his wages all night until the rising of the sun, and a night laborer can collect all day until the setting of the sun (L. c.).

9. If the day employee brings evidence that he

had claimed all night and tried to collect his wages, but did not receive it, he is believed during the following day with an oath to receive his wages; for instance, if he worked all day Monday, his time for collecting his wages is all night that belongs to Tuesday; if the employee brings witnesses that he had claimed all night, but did not receive it, he has the right all day Tuesday to swear and receive the wages; afterward he is not believed with an oath, only possession is nine points of the law; therefore, the employer is believed, but he must receive an oath (*heses*) (L. c.).

10. If the employer claimed that he hired him for two *zus* a day and the employee says three *zus*, possession is nine points in favor of the possessor and the employee must bring witnesses; if the employee fails to produce witness, although the employer gave him two *zus* already, he must take an oath, holding a holy thing in his hand and he is free (*Schwuas* 45).

11. This rule applies only if the employee was hired in the presence of witnesses and they did not know for how much they arranged the price. However, if he was hired, but not in the presence of witnesses, or even if in the presence of witnesses, but the claim was made after the time for collecting the wages is over, then the employer is believed with an oath (*hises*), and if he admitted a part of it, then he must take a *thora* oath (L. c.).

12. If one gave his coat to a tailor for repairs and the tailor claimed that he promised him two zus for the work and the owner said one zus, if the coat is in the hands of the tailor, and he can plead that he bought the coat, therefore, he is believed with his plea that his wages are three zus; and the tailor must swear, holding a holy thing in his hand, that he was promised three zus, and he can receive the money. But if the coat was already given to the owner, possession is nine points in favor of the possessor, and the tailor must bring witnesses; and if he fails to bring witnesses, then the owner can swear by holding a holy thing, that he promised him only two zus and he is free (Schwuas 45).

13. The employee when he came to receive an oath must be treated cordially, and no additional claims can be included in this oath, and the judge shall say to him that he shall not feel pain, and shall swear and take the money (Schwuas 49).

## CHAPTER XC.

### THE LAW OF ROBBERY.

1. If witnesses saw one enter in another's premises to take a pledge without permission of the court, and he had no parcels with him, and upon leaving said premises the witnesses said that they saw him car-

rying bundles underneath his coat, and they do not know how much was carried away, and the owner of the premises claimed a certain sum, the value of said articles, and the alleged robber said, "Yes, I came to your house, but did not take anything, and the articles which I carried out were my own," or he said, "I never was in your home," or he said, "I merely took one article," and the owner of the premises claimed that he took more articles, even the witnesses recognized a part of the articles, and the owner of the premises claimed that he took more than the witnesses saw, by all the above claims the owner of the premises must swear, holding a holy thing in his hand, and he can receive his entire claim\* (Schwuas 44).

2. However, if such articles are claimed as would be impossible to carry underneath the coat, there are two opinions given by the authorities, one holds that the defendant must take an oath (hises) and he is free; and the other states that he must receive only a ban on whom he denied the money of the other and refused to pay (Tur).

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\*NOTE—He is only believed when he claims such things which an owner of such premises is possible to have, and it is possible to carry them beneath the coat.

3. If witnesses saw a man enter in another's premises to take a pledge without the permission of the court and they did not see when he went out or they saw when he went, but did not see him carry anything underneath his coat, and the owner of the premises claims that so many articles are missing and although the visitor claimed that he never went into his house, and even he contradicts the witnesses, he is free, because he can say, "I came in, but did not take anything," and he must receive an oath (hises) and is believed, because it is possible that he came in, but did not touch anything (Rambam).

4. Another opinion states, because the witnesses contradict him, he is not believed; and the owner of the premises must swear and receive the value of the claim (Ramo).

5. If one witness testified that one went into the premises of another and to take a pledge, without the permission of the court, and he took articles underneath his coat, and he does not know how much, and the visitor claimed that he did not take anything, or he said, "I took for my debt," and because this one witness does not know how much was underneath his coat, therefore, the visitor must swear that he did not rob and is believed (Rambam).

6. The above rule as to the receiving of an oath

by the owner of the premises, can be attained by his watchman or the wife of the watchman, even though they swear how much the robbery was, they are believed, but the employee of the owner of the premises is not believed with his oath, because the care of the house is not entrusted to him (Schwuas 46).

7. If one enter into another's premises to take a pledge without the permission of the court and witnesses saw him carry out articles underneath his coat, and the owner of the premises was absent and cannot swear as to what was the value of the robbery, and the witnesses do not know how much was the value of the articles, the robber cannot be believed with an oath, because he is suspected as a perjurer; therefore, the court must give a ban on who took articles from that house and did not admit; and even if the robber admitted that he took a part of it, they must return the admitted part, and he is free, because the owner of the premises cannot claim exactly the amount missing (Rambam).

8. If the witnesses testify that the owner of the premises had a certain number of articles and they saw the visitor come into the premises, and when he went out, and nobody else entered after him, and they afterward counted the articles and a certain amount was found short, and there is no other place where same could have been lost, or misplaced, it is

an opinion that the owner of the premises can receive the value of the articles short from the visitor without an oath (*Tur*).

9. If a man sets fire to another's premises and thereby destroys everything, the owner of the premises is believed when he swears as to how much the articles are worth which belonged or were entrusted to him as a bailee, and can receive payment from the incendiary (*R. K.* 61).

10. If one destroys the fortune of another, and the destroyer does not know the extent of the damages, the owner of the articles destroyed must swear as to the value of the articles and can receive the money from the destroyer.\*

11. If one entrusted to another a bound bag for watching, and on account of negligence of the bailee, it was lost, or stolen, and the bailor claimed that it contained gold or diamonds, and the bailee said, "I do not know what was in the bag, there might have been paper or sand," then the bailor must swear and receive the money. When he claim such things as is possible for him to have or that are likely to be entrusted to him, if the bailee claims positively that

it was sand or paper, then he can take an oath (heses) and he is free. If, however, the bailee said, "I know it was contained gold, but do not know how much the value, then the bailor can be believed without an oath. It is an opinion in the event when the bailee says, "I do not know what was in the bag," he must receive an oath that he does not know and he is free.

11a. One man give in storage a gold ring to the other and by the receiving of the ring the bailee not weighed and not proved then and the ring got lost by negligence of the Guardian and the bailee claim that the ring was pure gold and was weighed too denarum and the bailee say, "I don't know if that was pure gold or plated and how much was the weight, and yourself know that I cannot have any idea in the value of the ring.

The bailor must receive an oath how much was the value of the ring and he can receive pay from the bailee (Ravad).

12. If one enters in the premises of another in his presence, and goes out again, and there were articles underneath his coat and witnesses saw it, afterward the owner said, "Give me back my articles which I loaned you, and here are the witnesses who saw me lend them to you," and the visitor claimed that he bought them, the visitor is not believed, and the owner of the premises can swear a

hises that he did not sell him, nor did give him as a gift the articles in question, and the same must be returned to the owner of the premises (B. B. 36).

13. The above rule applies only when the owner of the premises is not accustomed to selling articles and the visitor is not in the habit of hiding such articles underneath his coat; therefore, he is bound to return it. However, if it is the customer of the owner of the premises to sell his articles, although the visitor is not in the habit of hiding articles, the visitor must receive a heses that he bought same and is believed (L. c.).

14. If one seized an article from another and he claimed that he seized same for his debt, and there are witnesses that he snatched it from his hands or from his house, he is not believed and must return it. If there is only one witness and he denied the seizing, he must receive an oath to contradict the witness, and if he claimed that he took same for his debt, the articles must be returned (B. B. 33).

15. WOUNDED. For instance, if witnesses saw that a man went into another's premises in a perfect condition, and upon leaving the premises was seen to be wounded, and the visitor claimed that the owner of the premises wounded him, and the owner claimed that he did not wound him, but that he wounded himself, the visitor is believed with an oath. If there is

evidence that the owner wounded him, for instance, the wound is in such a place that it is impossible to wound himself—that is, on the spine—and no one else was present with them, the visitor can receive the value of the damages without an oath (Schwuas 44).

## CHAPTER XCI.

1. The storekeeper with his book is believed with an oath to receive his pay for the credit. For instance, if the owner said to the storekeeper, "Give to my employee the value of one sala," and the employer admitted that he said so, or there were witnesses and the storekeeper said he gave the one sala, and the employees claimed that they did not receive anything, the employee and the storekeeper must swear, holding a holy thing in their hands, in the presence of each other, so that they shall feel shame towards one another, and each one will receive payment of one sala from the owner (Schwuas 45).

2. And the same rule applies if one says to the storekeeper, "Pay out 100 zus to my debtor, and the storekeeper claimed that he had already paid, and the lender claimed that he did not receive it, they must swear in the presence of each other, and the owner must pay each one 100 zus (Tur).

3. The above rule applies when the employee and

the storekeeper are present and each one claims from the owner. However, if the storekeeper died and the employee alone claimed from the owner, or the employee died, and the storekeeper alone claimed from the owner, the one can receive payment without an oath, because the owner did not lose anything, because he only paid once (Rambam).

4. It is an opinion, if the employee died, and the storekeeper claimed that he gave to the employee the sala, he cannot receive same from the owner without an oath because perhaps he gave nothing (Ramo).

5. If the owner gave the sala in advance to the storekeeper, and commanded "give to my employee the one sala," and he authorized the storekeeper in the presence of the three parties, and the employee was satisfied with the transfer, the employee cannot claim from the employer and the storekeeper can receive an oath (hises) and is free. If, however, the authorizing was not in the presence of the three parties, then the storekeeper must swear an hises to the employer that he fulfilled his message and he is free, and the employee must swear to the employer, holding a holy thing in his hand, that he took nothing from the storekeeper, and can receive payment from the employer (Kidushin 43).

6. It is an opinion, even though the storekeeper did not state positively that he gave to the employee,

but he says that he found in his book that he had given the employee so much, he is believed, because it is circumstantial evidence from, that the employer commanded so to give them, and he can swear on them what it is written in his book (Tur.)

7. A trial can be decided by the evidence that is found in a book in which the plaintiff writes all his business transactions, even when the claims are made to collect from an estate of small orphans (L. c.).

8. If the storekeeper claimed from the employer "you authorized me to give to your employee 100 zus, and the employer denied it, the employer must take an oath (hises) and he is free. However, if he admitted that he authorized him to give the employee 50 zus, then the employer must swear a Thora oath that he only commanded him to give 50 zus, and he must pay the admitted 50 zus. If the employer said, "50 zus I commanded," and 50 zus is in doubt, he must pay the 100 zus (B. M. 98).

9. If the employer did not specify any certain amount which should be given to the employee, he merely commanding to give them as much as they need, and the employee is absent, or he died, the storekeeper is believed for the full amount of his claim without an oath to collect from the employer (Tur).

10. If a minor hired employees, and he said to the storekeeper to pay them, and the storekeeper claimed that he paid them, and the employees claimed that they did not receive any money, there are two different opinions, one holding that the storekeeper and the employees must take an oath in the presence of one another, and collect from the minor employee, and Mamannid holds that the employee can swear and receive payment from the minor employer, but not the storekeeper (B. K. 87).

11. If one said to a storekeeper, "Give me fruit for one dinner," and the storekeeper gave it to him, and the fruit is laying in the public highway, and the storekeeper claimed for the dinner, and the buyer replied, "I gave it to you and you put it in your pocket," the buyer must swear, holding a holy thing in his hand, and then he can receive the fruit. However, if the buyer gave the dinner to the storekeeper in advance and the buyer demand the fruit, and even though the fruit is lying in the public highway and the storekeeper claimed that he had already delivered the fruit and carried the same to his house, and the customer claimed that he had not received it, the storekeeper must swear, holding a holy thing in his hand, and he is free.

12. If a buyer came into a store for an order amounting to one dinner, and the storekeeper made

ready and wrapped up everything, and while putting the order into the buyer's bag the storekeeper claimed the dinner, and the buyer claimed that he paid it, the buyer is believed with an oath (hises). In the event that the buyer paid the dinner in advance, and he claimed the fruit, and the storekeeper claimed that he delivered the fruit, then the storekeeper is believed with an oath (hises), because possession is nine points in favor of the possessor (Tur).

## CHAPTER XCII.

1. If one is suspected as a perjurer, no oaths can be accepted from him, no Thora oaths, no rabbinical oaths, and even if the plaintiff said, "I will receive his oath even though he is suspected," he cannot be heard (Schwuas 44).

2. What is suspicion? If one swore falsely, for instance, the court gave him an oath if he knew testimony about a case, and he swore that he does not know, and afterward it is discovered that he does know the witnesses or a man was entrusted with an article as bailee, and he denied it, and he swore that he was not entrusted and afterwards it is discovered through witnesses that they saw the articles in his possession, or he swore that it is gold and it is wood, or he violates a ban enacted by the community, the

violator of the above rules no oath can be accepted of him (Schwabs 48).

3. One who is ineligible as a witness (see Chapter 33) no oath can be accepted from him (L. c.).

4. If R claimed a loan from B and B denied it and witnesses testify that the loan was made, B cannot be suspected as a perjurer so long as he does not receive an oath. If, however, B was entrusted with an article as bailee, and he denied it, and witnesses testify that they saw the article in his hand, at the time he denied it, even though he did not receive an oath he is suspected from taking an oath (B. M. 5).

5. No man can be suspected of perjury, excepting when witnesses testify that he violated such a command; which can make him as a suspected perjurer. However, if he admitted himself that he is suspected as a perjurer and he violated a command which made him ineligible, although he is refused to be accepted as witness, but if he is found bound on an oath to be free from the claim that was made against him, with his oath he can be believed. However, if he is found bound to receive an oath and receive the money, in that oath he cannot be believed. It is an opinion in that event if the plaintiff wishes he can swear and take the money (Tur).

6. If one is found bound to swear a thora oath and he is suspected as a perjurer, the plaintiff must

swear and take the money if his claim was a certain one; if both are suspected as perjurors, the oath belongs to the defendant, and because he is not permitted to swear, therefore, he must pay. Another opinion stated that in such case the amount of the claim must be divided and the defendant must pay one-half (Schwuas 47).

7. If the man suspected was a guardian and he pleaded that he lost the articles entrusted to him, the plaintiff cannot swear and take the money, because he is uncertain about the claim. There are two opinions, one stating that the bailee is free, and one stating that the bailee must pay (Smae).

8. However, if the bailor claimed that "in my presence he used the articles for his own benefit," or "in my presence he was negligent" in the care of the article, then the plaintiff can swear, holding a holy thing in his hand, and can receive the amount of his claim (L. c.).

9. If the man suspected was found bound by a rabbinical oath, if he is from the kind swearer who received the money, he cannot swear and take the money, only the defendant can receive an oath of hises and he is free (L. c.).

10. If the one suspected as a perjurer presented a note for collection, and he admitted that he received

a part payment on the note, and the borrower claims that he paid the whole note, it is two opinions; one holds that the defendant can receive an oath (hises) and he is free of the note, and one holds, because the note is acknowledged he is believed to have collected without an oath (Tur).

11. If the man suspected was one of the kind swearers on an uncertain claim, he cannot swear, and the second party cannot swear, because the claim is uncertain (L. c.).

12. If the man suspected is found bound by an oath (hises), the second party cannot swear and take the money, only the defendant is free without an oath. The court can put a ban on whom denied the money belonged to the other and refused to pay it (L. c.).

13. If the man suspected brought a note for collection from orphans (see Chapter 107) to the effect that no one can collect from orphans without an oath, and if he is not able to swear the note cannot be collected (Tur).

14. If one is found bound on an oath (hises) and the plaintiff was one of the suspected, the defendant cannot overthrow the oath of the plaintiff because he is not permitted to swear, but he must either pay or take an oath (hises), and the same rule

applies if a minor claimed a certain amount from one and the other denied it, and must take an oath (hises) and the defendant cannot overthrow the oath of the minor (Rambam).

15. If one is found bound on an oath, either a Thora oath or a rabbinical oath, and he swore, and afterward witness testified that the defendant is suspected as a perjurer, his oath is void, and if he swore and received the money, the money must be returned to the first owner. If he swore and was found free, the second party must swear and take the money (L. c.).

16. The suspected man is ineligible to receive an oath until he is punished by the court with flagellation. If there is a witness to the effect that he received the punishment and he repents, his reputation is restored and he can act as a witness or receive oaths.

### CHAPTER XCIII.

1. The following persons can be given an oath even if the claimant is not absolutely certain: (1) A partner, (2) an agent, (3) an executor appointed by the court, (4) a woman who is active in her husband's business, (5) superintendents.

2. Even if there is no witness that the other was

his partner or his agent, only he admitted himself that he was his partner or his agent, or superintendent, but he claimed, "I did not rob anything," he must swear. The amount suspected must be the value two moes (see Chap. 88, Schwuas 45).

3. Even if one partner died, the heirs can demand an oath from the father's partners or agent, even though the claim is uncertain (Rambam).

4. If a man sent merchandise for sale with his comrade or gave him money to buy for him fruit or merchandise, even though he did not receive any compensation for this message and had not benefited by it, he must take an oath that he did not leave any of the money for his own use. Another opinion holds that he is not bound to swear as long as he did not wish to receive any profit or benefit or expense in that message (L. c.).

If, however, the agent is entitled to profit or to receive expenses incurred in this transaction, he must receive an oath that he spent all the money for the benefit of the business, or that he sold the merchandise at the same price as he told the owner (Ramo).

5. Partners dealing together or one was in business and delivered the merchandise or a part of it or the money in the hands of the other, without weighing or counting, or measuring, each one can claim from the other an oath (Tur).

6. However, if one partner was in the business and the other was a silent partner, an oath can only be demanded from the partner who is in business (L. c.).

7. If the partnership was dissolved or the woman was a divorcee and the superintendent was discharged and the agent brought the merchandise or the money, and they were silent, not claiming or demanding an oath, and afterward an oath cannot be demanded from them, except when the claim is a positive one, then they can demand an oath and can put additional claims on those oaths (L. c.).

8. If the partnership was dissolved and debts were left coming from customers, they cannot demand an oath from each other, because they dissolved and the amount of the debt is certain, and as much as they will collect, each one can take his share, therefore, it is as if it were divided, and they cannot demand any oaths (L. c.).

9. However, if some merchandise remains, which is not divided, or they do not know how much it weighs, or a part of the merchandise is not reckoned, each one can demand an oath from the other (L. c.).

10. R invested 400 dinarim and B invested 200 dinarim in the same business, and they started business together, R being in charge of all the funds, and

he claimed that the business sustained a loss of 500 denerim, which means an equal loss to each partner of 250 denerim, and B invested only 200 denerim, according to the calculation of R, B must stand an additional loss of 50 denerim; however, the law is not so; R must receive an oath that the business lost 500 denerim, and he is entitled to the 100 left, but cannot demand the balance of 50 denerim from B (Tur).

11. If R claimed that B is certain that the business sustained the loss of 500 denerim, R can demand an oath from B and put an additional oath that he did not know the amount of the loss sustained. If B did not take an active part in the business he can take an oath (hisest) that he does not know and he is free, and even if the 100 denerim left are in the possession of B, then the amount must be divided equally between R and B (Tur).

12. If B claimed that the firm owed 100 zus to C, if B had in his possession the value of 100 zus, and he was able to pay the debt to C, he is believed, and the debt must first be paid, and the reckoning of the partnership can take place thereafter. If he was not able to pay 100 zus to C, he is not believed to collect from R or from the merchandise belonging to the partnership, because perhaps some conspiracy existed between B and C as to the fortune of R, and even though the debt was in the form of a note and

R claimed that the note was not given for the business, R is not bound to pay for it (L. c.).

13. However, if B claimed that R knew that the debt was made on account of the business, then R must take an oath (hises) that he does not know, and B must pay the note from his own pocket (L. c.).

14. If C owed 100 denarim on a note made in the name of B from the money belonging to the partnership, and B claimed, "I collected the 100 denarim and I returned the money to the treasury of the partnership," or B claimed "I gave C an extension of one year or two years to pay the 100 denarim," he is not believed without a witness because maybe he is conspiring against the fortune of R. If B cannot prove his innocence by evidence that the money had been collected and re-invested in the firm, he must pay the 100 denarim to the business and C is free through the admission of B, and if the note is in the possession of R, B is only believed for one-half and R can claim the other half from B or from C, if B is unable to pay the half (Romo).

15. If two partners sell goods on credit and receive a note as payment, and they endorse the notes and use them in payment of their bills, and they have decided to dissolve the partnership, each partner has the right to demand from each other a guarantee or

security for half of the endorsement of the notes in case the notes will be protested (L. c.).

16. If the partners dissolved their business, and if some money was found by one of the partners, and on account of the law it belongs to the business, therefore, if the finder invested same in the business and afterward they decided to dissolve the business, the partner who found the money can claim that he is afraid of trouble from the owners of the loss, and demand a note as security from the other partner, he is not entitled to a note; but the other must admit the statement before witnesses and they will make a written statement to the effect and will give it to the finder (Tur).

17. R and B are partners in business and R says to his brother, "Try with us in business and put your money with our money and you get profit according to your investment," and B knew of the command and was silent, and now B says, "I will not give from my part of the profit to your brother"; the right is with R and his brother can take his profit according to his investment.

18. When the partners wish to dissolve their business, and R shows some notes that he sold goods on credit, if it is the custom in the city to sell on credit B must accept the credit and the notes, and if B wishes he can give R an oath that it is done for the

welfare of the business, and if it is not the custom to give credit, then B can demand cash for his share in the notes (L. c.).

## CHAPTER XCIV.

1. If one is found bound of an oath, even a hises, the other party can put additional claims on him upon his oath. Even if the plaintiff did not demand the oath the court has the right to put in the oath the other claims (Schwuas 48).

A laborer when he swears to collect his wages no additional claims can be put to him (L. c. 49).

2. The additional claims can be added when the defendant's pleas are certain and he is bound to take an oath. However, if his plea is uncertain and he is bound to take an oath, no additional claims can be added (Kidushin 27).

3. The additional claims must be with circumstantial evidence that is true, then the plaintiff can add on the oath (L. c.).

4. If a defendant is found bound on an oath and the plaintiff starts to add additional claims, and therefore, the defendant said, "I do not want to swear, I want to pay for the first claim which I found bound on an oath," he cannot be heard, but the court

can command the defendant to return or to pay for all the positive claims or take an oath for all the claims (Jerusalmi).

5. If the additional claim or the plaintiff was uncertain and the defendant wishes to pay the one positive claim, he is not bound to pay the additional claims (Tur).

6. If the defendant, after he is found bound on oath, said, "I will pay but will not swear," and afterward the plaintiff claimed from him additional claims, he can pay the first claim and he is free, because he admitted to pay before he knew that he wished to add more claims (Tur).

7. If one is found bound on an oath (hises), and the plaintiff adds against him more claims, he had the right to overturn the oath of the second party, and the court must command to him to swear on all claims or overturn all the oaths of the other party, and let him swear for all the claims and receive payment. If, however, the defendant claimed on the additional claims I will swear, and I will be free, and on the first claim let the plaintiff swear, it is effective (Tur).

8. If R claimed from B 100 zus, and B admitted the 50 zus, and on the balance he said that he is in doubt about it, and R added against him additional

claims and B denied the additional claims, although he must pay the principal claim, because he cannot swear, therefore, he must pay, but with the additional claims there are two opinions, one stating that he can receive an oath that he did not owe or overturn the oath to the other party, and another opinion states that the defendant is free from the additional claims without an oath (L. c.).

9. If one is found bound to take a thora oath and the plaintiff wishes to add against him additional claims for which he must swear an oath (hises), the defendant can say, "I will swear a thora oath and for the additional claims you swear and take the money" (L. c.).

10. If R claimed from B 100 zus, and B admitted 50 zus and denied 50 zus, and when B started to swear, R added against him additional claims, and B said that he is uncertain about the additional claims, B is bound to take an oath for the first claim and he is free to swear for the additional claims, but the court must put a ban on who owed the money to the other and did not admit it (Tur).

## CHAPTER XCV.

1. No Thora oath can be found bound on a claim of real property, or a claim of notes, either an oath

which the defendant denied entirely, and admitted a part of the claim or denied all, and one witness contradicted him, or the defendant admitted a part of it, either the oath of a guardian, even though the guardian was negligent in the guarding and became lost, and he is free of payment, whether he was a guardian gratuitously or a guardian for compensation or a borrower (Schwuas 42).

2. But an oath (hises) can be found bound even on real property or notes. If a condition was made with the guardian that shall be liable to pay even for the real property and notes, the condition must be fulfilled (L. c.).

3. If R claimed from B ripe grapes ready to be taken from the vines, or dry wheat ready to be cut off the field, and B admitted a part of it that he already ate then, and denied a part, B is bound to take an oath for them, as alike if the claim was on personal property, because that which is ready for cutting from the field is as though already taken off, and the law of personal property prevails on it. If, however, the grapes are not ripe or the wheat is not ready to be cut, no oath can be imposed for same (Schwuas 43).

4. R claimed from B that he had lived on his premises for two months without paying rent, B admitted that he lived one month on the premises with-

out paying rent. If the rent of the premises for one month is not less than two moes silver, then B must take a Thora oath because the claim is not made for the real property, merely for the rent, and the rent is like personal property and an oath can be imposed for them (*Tur*).

5. This same rule applies if R claimed from B 100 zus on the sale and transaction of real property, and B admitted a part of it, B is bound to receive a Thora oath (*L. c.*).

6. R claimed from B vessels and real property, B admitting the vessels, but denying the real property, or he admitted the real property and denied the vessels, whether he admitted a part of the real property and denied a part of the real property and the vessels, he is free from a Thora oath. If, however, B denied all the real property and admitted a part of the vessels and denied a part of the vessels, he is bound to take a Thora oath of the vessels and additional claims can be added to him for the real property (*Schwuas* 38).

7. If B dug in R's fields holes or subways and he spoiled R's fields, B is bound to pay for the damages if R claimed that B dug it, and B denied it, or R said that he dug two subways and B admitted one, or denied all, and one witness testified that B dug it, he is free of a Thora oath.

8. It is an opinion that the above rule holds good when R demands to fill the subways with earth. However, if he demands money to pay for the damages an oath can be granted on same (Tur).

## CHAPTER XCVI.

1. No oath can be granted on a claim if the plaintiffs are dumb, deaf, fools or minors, whether they claim for themselves, or for their fathers, whether the defendant admitted a part of it or he denied the entire claim, and one witness testified in favor of the plaintiff, he is not bound to take an oath, because their claim is uncertain (Schwuas 39).

2. Therefore, if a minor claimed from an adult person that he owed him 100 zus, or "My father has in your hands 100 zus," and the adult person admitted 50 zus, or the adult person denied all of the money, and one witness admitted that he owed him 100 zus, the adult is free of a Thora oath. However, if one was a guardian of an article belonging to a minor, and the guardian claimed that he lost it, then he must take a guardian's oath, because this oath does not come on account of certain claims (Schwuas 39).

3. Another opinion holds that even the guardian's oath cannot be imposed when the bailor is a minor, even though the claim is made when he be-

comes of ages, but the delivery was made when he was a minor (*Tur*).

4. If one admitted that he was a partner or a guardian to a minor, then the court must appoint a guardian for the minor and the partner or the guardian must receive an oath in the presence of the guardian (*Rambam*).

5. For the claim of a dumb, fool or minor, an oath (*hises*) can be granted, and the oath cannot be turned over to the plaintiff (*L. c.*).

It is an opinion that the minor must be seven years of age, then the defendant must take an oath (*hises*) of his claim.

6. If an older man claimed from a minor 100 *zus* and the minor admitted, and he is seven years old, and the loan was made for a business purpose, of which the minor had the benefit, the court can collect from his estate; however, if there are not sufficient funds to collect from the minor, the plaintiff must wait until he will be able to pay. If the minor denied it, they must wait until he becomes of age and he will receive an oath (*hises*) (*L. c.*).

7. If the claim is for a matter that is not of benefit to the minor, for instance, he broke a window with a stone or wounded a person, even though the minor admitted it, and even though he had sufficient

funds from which to collect, he is free even after he becomes of age (L. c.).

8. If the plaintiff of the minor was from the kind that they must swear and receive the money, for instance, the minor hired laborers and commanded the storekeeper to give the employees one sela, and the storekeeper claimed that he gave them, and the employees claimed that they did not receive it, the employee can take an oath and receive pay from the employer minor, but the storekeeper is not believed with an oath to receive payment from the employer minor because he has no benefit from it, because he paid the sela to the employee, and the storekeeper took a risk of himself because he gave his money through the command of a minor (L. c.).

9. If a dumb or insane person claims from others or the others claim from them, it is not effective, because no oath can be imposed on said claim, and no payment, but a blind man is like a healthy person, he can be bound on an oath, and can make the other be bound to an oath. An opinion states that the same law applies to a deaf person as to a minor, but an insane person, even if he recovers and admits, he is not bound to pay, and even though the loan was made in the presence of witnesses, the lender who loans to such a person money is like throwing the money into the river (L. c.).

10. When a married woman is found bound to an oath she must swear, and if she is in contempt of court she can be forced like a man, and if she is found liable to pay, a judgment can be written in her name and she must pay when she becomes a divorcee or a widow, but the husband is not bound to pay for her judgment, even though she is actively engaged in his business (*Tur*).

11. If a claim was made against a married woman for borrowing vessels and the husband admitted that the vessels were delivered in his possession, and she claimed that the vessels were stolen or lost, the husband must take an oath that the vessels are no longer in his possession, and he did not use them, and he was not negligent in the caring of same, and he is free (*Romo*).

12. An opinion holds that no oath can be imposed on a woman during the time of pregnancy (*L. c.*).

## CHAPTER XCVII.

### הלוות גבייה מלוה

1. It is a command to loan money to the poor. It is a more important command than to give charity, and the poor relative comes first before the poor strange man, and the poor man of this city has the

preference over the poor man of another city, and if a rich man needs a loan it is commanded to give him the loan and to give him a good advice in business (B. M. 71).

2. It is forbidden to crush the borrower to pay when we know that he has nothing, and even to pass before him is forbidden because he feels embarrassed when he sees the lender and he has no money and is unable to pay (B. M. 75).

3. It is forbidden to the borrower, when he is able to pay the loan and refuses the lender, with the delay, for some other day (B. M. 105).

4. It is forbidden for the borrower to take the loan and spend the money uselessly so that the lender will not have from what to collect, and if he does so he is called wicked, and if the lender recognized the borrower to have a bad character and borrowed money and refused to pay, it is better not to lend him, than to lend and crush (L. c.).

5. If the lender goes to court and demands a pledge from the borrower for the debt, or to collect the cash, the court must fulfill the requests and they shall not say the borrower is a poor man and is unable to pay, and the lender is rich and he does not need the money, as no pity can be felt or shown in a trial (Tur).

6. If the lender wishes to take a pledge from the borrower after the loan is made, it is forbidden to be taken by himself, but the court must send his attendant, and even the messenger cannot come inside of the house for the pledge, but if he finds anything outside of the house, he can take it for a pledge, and the court attendant can take the pledge from the possession of the borrower with force and give it to the lender (B. M. 113).

7. After the loan is made and although the messenger found outside of the house a vessel that the borrower needs for the preparation of food, for instance, a hand grinder, it is forbidden to be taken as a pledge (L. c.).

8. If the court discovers that the borrower destroyed the grinder or defaced the buildings purposely to hide them, the court has the right to collect from him (Tur).

9. The vessels used for baking and cooking, for instance, the wooden dish, and the boilers used for boiling clothes, and the knives of the slaughterer, cannot be taken as a pledge, or if one took them, they must be returned to the borrower when he needs it for use (Rambam).

10. If the borrower had five hand grinders it is forbidden to take one of them as a pledge; however,

if he uses but one of them the attendant can take the others as a pledge (L. c.).

11. Articles of food can be taken as a pledge when there remains in reserve one month's supply for the borrower (Tur).

12. If the borrower of his own free will gives the messenger a vessel which he requires for the preparation of food, he is permitted to receive it (Tur).

13. A widow, whether she be rich or poor, after the loan is made, it is forbidden to take a pledge from her, even through the court messenger, and if he violates the law and takes the pledge from the widow, it must be returned. If the pledge was lost or burnt before he returned it to the widow, the lender must be punished by flogging (B. M. 109).

14. It is permissible for the lender to go into the house of the surety and take a pledge for the loan, and a vessel which is required for the preparation of food, there are two opinions, whether or not it can be taken by the surety. The same rule applies to the laborer's wages or for the labor of his cattle, or for the use of his vessel or for rent; it is permissible to take a pledge without the permission of the court, and it is permissible to go into the house and take the pledge.

15. However, if he places his wages as a loan, it

is forbidden to take the pledge without the permission of the court (L. c.).

16. This above rule applies only when the time of payment is not yet due, but he took the pledge as security, so that he shall be secured in his debt. However, if the note had matured and the lender came to collect his debt, and the borrower refused payment, and it is known that he has so much personal property and conceals it, then the court attendant is permitted to come to his house to take a pledge and pay the lender his debt, because it is commanded to pay a debt and the borrower is liable to punishment until he fulfills the command (Tur).

17. If the borrower is unable to pay he cannot be forced to hire himself out as a hand laborer, or do some manual labor for the lender in order to pay the debt, and even if the lender made a condition with the borrower that he may attach the body of the borrower, and this condition is written in the note, it is not effective, and he is not permitted to arrest him and cannot compel him to serve as a servant to him (Rochs).

18. However, if it is a well known fact that the borrower has money, but refuses to pay the debt, the court has the right to arrest the borrower and force him with flogging or anything else until he pays (Ramo).

19. If the court messenger received a pledge with the permission of the court, or the borrower gave the pledge of his own free will, and the borrower is a poor man and needs the pledge for his own use, it is a command to return the pledge at the time when he needs it; for instance, if he took a pillow it must be returned during the night because he needs it to sleep on. If he takes a plow it must be returned in the morning because he needs it to do his work with during the day (B. M. 113).

20. This rule applies when the pledge was taken after the loan was made. However, if the pledge was taken at the time the loan was made, they do not have to return it B. M. 113, L. c. 115).

21. When the court messenger comes for a pledge he shall not take such articles as are impossible to give him; for instance, that the coat that the borrower wears or the dish that he eats from, or the bed that he sleeps in, or the chair that he sits on, neither can he take any of the household necessities that he uses, cannot be taken as a pledge (Tur).

22. Even if the borrower is rich in real property, but he has no personal property outside of what was taken as a pledge, the lender must return it (Tur).

23. When the time of the loan has matured, and the lender wishes to collect his debt, then the court

must command the borrower that he should bring all the personal property to them, and he shall not leave as much as one needle behind, even the vessels which are used for food, and he is entitled to receive the value of the cost of living for thirty days and the cost of clothes for twelve months, viz., if he wore a gold hat it must be exchanged for a plain hat. The clothing must be of medium quality. If the borrower was accustomed to wear expensive clothing, for instance, silks or a cap trimmed with gold, this must be exchanged for medium quality clothing, and there must be left to him a chair to sit on, a bed and all bed clothing to sleep on—for him only, and not for his wife and small children, even though he is bound to support them; and his shoes and frontiles must be left to him (B. M. 114).

24. If the borrower was a laborer, he is given exemption for two of each kind of tools, for instance, if he is a carpenter, two planes and two saws must be left for him (Erchin 23).

25. If the borrower had a quantity of one kind of tools and of another kind of tools a small quantity, for instance, he had one plane and five saws, then the one plane must be left so that it will not be necessary for him to buy a plane; two saws must be left and the other three saws can be taken away.

26. If the borrower was a plowman or an ex-

pressman, or used a yacht or ship, all these can be attached for the debt, even though he cannot make a living without them, and it can be sold in court, and the proceeds must be given to the lender (L. c.).

27. If the borrower was an educated student, the books and the five Scrolls of Law can be attached and be sold in court, and paid to the lender. The lender is even entitled to collect from a seat in a synagogue (L. c.).

27. If the wife of the borrower secreted money from her husband's fortune for future support, this money must be taken from her and given to the lender, because she is not entitled to support until the debt is paid (Tur).

28. Even the wife's debt does not get preference over the lender's debt; for instance, her husband went overseas and she borrowed money on a note for support and this note matured before the lender's, the note for support cannot be collected before the lender collects his note (L. c.).

29. However, if the husband's debt was an oral debt and her debt was oral or with a note, the one who presents first, is entitled to collect first. If they come at one and the same time, for collection, and the fund is insufficient, they must share the amount, half and half (L. c.).

30. If the money was given as her dowry and had remained in her possession or in the possession of her father, she can seize it for her support (Ramo).

31. The lender cannot realize on the clothing belonging to the wife or to the children of the borrower, and even though the clothing is new and had never been worn, but it was bought for them, or books which were purchased for the children, the lender cannot collect (Erachin 24).

31. If there are rings and jewelry, and the husband bought same for the wife, the debt can be collected from them. However, if the rings and jewelry were given to her as dowry before she was married, or she bought them as dowry, whether guaranteed or unguaranteed property, the lender cannot realize on them. The woman is believed to say in reference to an article that she brought same with her at the time of the marriage (Tur).

32. If the woman brought in cash money and the money is in her husband's name, the lender can collect from it.

33. If the dowry is in her name, or the name of her father, the lender cannot collect (Rosbo).

34. If the lender made a condition with the borrower that if he will be unable to repay the debt, he

will retain nothing, but everything shall be sold for the payment of the debt, the condition is effective (Tur).

35. It is an opinion that for wages, whether for a man or for a cattle, etc., and not made as a loan it can be collected and nothing need be left for the borrower; another opinion holds that something must be left in that event for the borrower.

36. If the borrower took an oath that he would pay, then nothing can be left, but he is bound to sell everything he possesses, even his shirt, pants or girdle to meet the debt, but he must not violate his oath (Tur).

## CHAPTER XCVIII.

### THE FORM OF COLLECTING A DEBT.

1. If R presented a note of B, acknowledged by the court, and the court commanded B to pay, even though the note is a good many years old, he could not say that he is released; only the borrower must pay, and even if the note is not in his hand, if the borrower admitted it he must pay. The court must cross examine the lender for the reason that he did not present the note until now, in order to be able to give him a fair hearing and a fair trial.

2. The borrower must be notified before the court sent the sheriff, if it is possible to do so; for instance, if he is near and if the judge made a mistake and took his fortune without notifying him, the judge can be discharged (B. M. 174).

3. If the borrower claims and says that, "this note which is acknowledged before you is false," and I can bring evidence to prove that it is false, and there is my witness at such and such a place," if the judges think that he is worthy and that perhaps he is right, then a time must be appointed to bring in his witnesses, and if they understand that he came with false testimony to delay payment, they must command the borrower to pay, and if he subsequently brought his witnesses the trial could be re-opened (Tur).

4. If the lender was an armed man and he received the money, later when the undefended man brings witnesses and it would be hard to collect from him, the money must be deposited with a bailee (L. c.).

## CHAPTER XCIX.

1. If the borrower has no claim against the note only he claimed that he has no money to pay it, and the borrower only possess then personal property, he is entitled to be exempt (see Chap. 97).

An enactment made by Goenim that the borrower must receive an oath of suspicion, holding a holy thing in his hand, that he has no more property than the law permits to be exempt, and he did not hide in other hands, or did give gifts to anybody, and must combine in that oath, as much as he will receive profit from anything that will come into his hands, or his possession, he will not use for his support, or for his wife and children, and will not use it for clothing, or give any gifts, only he will take off for thirty days' support for him and clothing for twelve months, of medium quality, and the balance he will give to his debtor, until the entire debt is paid, and the court must give a ban of whom he knows that he has something of the defendant's fortune and hide, and did not notify the court (L. c.).

2. If the borrower has a number of lenders, he does not have to swear for each one separately, only one oath is sufficient for all (Kesuboth 94).

3. If afterward the borrower received money and he claimed that the money belonged to another, or he claimed that another gave him merchandise or money for business to share the profit to each one, he cannot be heard, until he proves this with witnesses (Rambam).

4. R gave an article to B for sale, C came and took the article from B for his debt. If it is proven

by witnesses that the article belongs to R it must be returned to him, if it cannot be proven by same, and even B admitted that the article belongs to R, it cannot be taken from C (Tur).

5. If B is a commission merchant who sells articles belonging to others, his debtor cannot collect from these articles, because it is certain that the articles do not belong to B, and the same rule applies if the lender finds articles by the borrower and another claimed that it belongs to him, having loaned it to him, or hired it, and he had two witnesses that says it belongs to him, he is believed, and the debtor cannot take it as a pledge (L. c.).

6. If one is considered as fraud, and is crooked in business and it is knowing that he has abundance of money, and he claims that he has nothing, and he is eager to swear, an oath cannot be granted, and the judge can excommunicate and force him until he pays (L. c.).

7. If the borrower is known to be a poor, honest and perfect man, and the lender wishes to examine him in supplementary proceedings, he wants to make him feel embarrassed and to slander him in the presence of the public, to take revenue of him that he shall lend money from another or to sell the fortune that belongs to his wife and settle the debt. The Judge is forbidden to give to such man the oath and if the

Judge violates the law, and gives the man the oath, he violates the command of the Torah (if thou lend money to my people to the poor by thee, thou shalt not be crushed; Exodus 23), and the Judge must reprieve of the lender for doing so (Rambam).

8. If the borrower received a certain amount of money from a charity organization for support, the lender cannot attach the money for his debt; except when the money was given for that purpose to pay the debts (Y. D., Chapter 253, Kidushin, 16).

(For the rest of the chapter see Jewish Code, Part 4, page 503).

## CHAPTER C.

1. If the borrower said, "I will pay, grant me a time, because I want to loan from another, or I will give a pledge, or I will sell an article, and I will bring money for the debt," he must be granted thirty days' time. If the judge understood that thirty days are not sufficient, or thirty days are too much, he must be granted time according to his judgment (Rambam).

2. If the lender (plaintiff) claim that he must go away, and has not time to wait until time is granted, the court can command that the lender shall

appoint an agent to receive the money from the defendant when the time matures (L. c.).

3. If the court is in fear that the defendant may escape, they have the right to ask him to give a surety man until he brings the cash (L. c.).

4. When the time granted elapsed and he is not able to give any money, it is two opinions if he can receive another grant of time, one holds that he cannot receive more time, and another holds that thirty days more can be granted (Tur).

5. After the thirty days are finished, and he did not bring any money, the court can write an execution on his fortune. If there is no fortune, he cannot be excommunicated. If, however, he had a fortune and refused to pay, an execution must be written on his fortune, and if there is none to be found he must be notified, Monday, Thursday and Monday, and afterward he must be excommunicated until he will pay, or he will prove that he has nothing and receive the suspicion oath (L. c.).

## CHAPTER CI.

1. When the borrower came to pay the debt, if he possess cash money he must pay with them to the lender, and he cannot say to him, "take from me real

or personal property"; and if it is uncertain that he possesses cash money he cannot be given an oath of them, and even we see that he has money, and the borrower says that the money is not his but belongs to another, he must be believed without oath, but the court can put a ban on one that has cash and refuses to pay with them, and the lender must receive for his debt personal or real property (*Tur*).

2. If the borrower says that he has not cash and he is found a liar, or the court recognizes that he has money and refuses to give it, the borrower is no longer believed and he can be forced to pay with cash (*L. c.*).

3. If it is positive that he has no cash, it is not his duty to sell the articles or the real property and get cash, only the lender must receive what he had (*L. c.*).

4. If the borrower possess real and personal property, and the lender likes better the personal than the real, then the personal property must be given. The lender cannot refuse to choose this personal or other personal, only the borrower can give him any personal desired (*Kesuboth 86*).

5. If the borrower possesses cash and real, or cash and personal property, and the borrower wants to pay with cash, then the lender cannot say, "I do

not want cash, but either real or personal property, and the same rule applies if the borrower possesses real and personal, and the same wish to pay with personal, the lender cannot demand real property (B. K. 8).

6. If the borrower possess real property, and he wants to pay with it, and the lender says, "I do not want money from you just now, but I will wait until you have cash," the right is with the lender (Tur).

7. If the borrower has money deposited in a savings bank or by bailee, the money must be taken from the bailee and given to the lender, if the money was given to the other as a loan, if on time and the time has not matured, the money cannot be taken before the maturity (L. c.).

8. If the borrower has notes to collect from other borrowers, the lender can collect from it, and they must be appraised according to the rating of the borrowers, and the length of time, etc. (L. c.).

9. Everything the borrower gave to the lender for his debt, must be appraised according at what it could be sold at in said place and at present prices. The lender shall not need to go peddling with it in other cities, and shall not need to keep it until the prices advance, because the door of the borrower shall not be closed for loans (Tur).

10. All the personal property from the borrower can be collected for the debt, and if it is not sufficient, then the rest can be collected from the real property and all the real property can be collected, even if it is obligated to his wife, for her contract of marriage, or to a debteor that is preferred before them. If afterward the first debtor came and claimed the same real property, he is entitled to recover it (Rambam).

11. If the borrower has real property and personal property, and has a number of debts to heathen and Israelite, and the borrower commands I must pay all the debts to the heathen, because if I pay the debts to the Israelites first, the heathen will arrest me and put me in prison. And the time of the note of the Israelites is matured, he cannot be heard, but the debtor can collect his debts, and if afterward the heathen will arrest him, it is a command of all the Israelites to release him from captivity (Tur).

## CHAPTER CII.

1. When the lender comes to collect from real property, he is entitled to collect from the second class of the fortune of the borrower. If the borrower has three or four fields from the second class, the lender cannot say give me this field; the borrower has the right to give him any field he desires (Gitin 48).

2. If the lender is satisfied with the third class and he says, "Give me from the third class a little more according to the present price," this is effective.

3. If the lender says, "Give me from the first class a little less even on the price that could be raised afterward," it is not effective (B. K. 7).

4. If the borrower has only from the real first class, he is forbidden to sell it, and buy for the money second class to give to the lender, only he can collect from the first class (L. c.).

5. If the borrower has in that city first class real property, and second class real property in another city, the borrower cannot say that he must take for his debt from the second class of the other city, but he must give him from the first class in the place of the lender (L. c.).

6. If the borrower has real property, first or second or third class, then the lender must take anything he has; if the borrower has first class and second class, he must give him the second; if he has first class and third class, then the lender can receive only the third class. If the borrower has third class and second class, if at the time the loan was made, he has first class and he sold it, the lender must receive the second class; if he has no first class, then the lender must receive third class (B. K. 7).

7. If the borrower has first class, second and third class, and he made a condition with the lender to pay him from the first class, and he possessed perfect first class, and they become spoiled, then the lender can collect only from the second class, because at present the first class is like the perfect first class after spoiling the perfect first class (B. M. 15).

### CHAPTER CIII.

1. When the three experts appraised the real property of the borrower, that must be appraised according to the time and the place when the appraising is made, and afterward an announcement must be issued shall buyers come, and the highest bidder or the lender has the preference to receive for that price (Tur).

2. If the real property is taken by the buyers who bought after the loan is made, then an announcement must be issued for thirty days, and the buyers come and make the price. If it is the same like appraised by the court or more, the money can be taken and given to the lender, and if the lender wants to take the property at the same price, he has the right to. If the buyers do not offer the price, then they must give to the lender for the price appraised by the court (Tur).

3. If three appraisers, one says that it is worth 100 zus, and two said two hundred zus, or vice versa, one said two hundred zus and two said one hundred zus, majority rules (L. c.).

4. If one appraised for 100 zus and the other 80 zus, and the third appraised for 120 zus. The real property must be sold for 100 zus, because the difference from the one stated 120 zus and the one 80 zus, must be divided, therefore making it 100 zus (B. B. 107).

5. If one appraised it 100 zus and the other 90 zus, and the third said 130 zus, then same must be sold for 110 zus for the same reason (See preceding paragraph.) (L. c.)

6. If three appraisers appraised the real property and the lender claimed that other three expert appraisers shall be appointed to appraise it, he cannot be heard (Tur).

7. The three appraisers can be related to each other (L. c.).

8. If the court appraised real property from the buyers after the loan is made and they made an error, even it is less of a six, the sale is void, even they made an announcement; if, however, the real property was in the hand of the borrower and they made an error in the appraising, and the real property is

sold, cannot be recovered if the error was less than a sixth of the value (Rambam).

9. If the debt is a small amount and the value of the real property will not be enough to make use of it, either it was a house or a field, or an orchard, and the lender said to the borrower, "Either sell me the balance—I shall have enough to make use of it—or pay me my money," the right is with the lender. If the lender does not want to buy more than his debt amounts to, and he says, "Pay me in cash, because the real property, according to my debt, is not enough to make use of it," the right is with the lender, and the borrower can be forced to sell the real property or to pledge the real property and pay the money to the lender, and the court must not feel pity on the borrower.

10. If the property was enough to make use for the lender, and a small piece is left that the borrower cannot make use of, then the lender cannot be forced to buy the balance for cash (Tur).

11. If the court appraised and announced the real property for the debt of the lender, and before the court gave title to the lender, the real property increased or depreciated in value, that all belongs to the borrower, and the court must make another appraisal and another announcement (L. c.).

12. If the lender took possession of the real property was a pledge given to the lender as a mortgage on condition that he shall collect from the field. But because he can pay with cash, therefore the lender must have the permission of the court. Another opinion stated that if the time of the debt has matured, or the real property was a pledge in the possession of the lender, he has the right to sell (L. c.).

13. If the lender took possession of the real property of the borrower without the permission of the court, and he ate the fruit, it must be deducted from the debt (L. c.).

14. If the court appraised a real property to the lender for his debt, either from the borrower, either from the buyers that they bought from the borrower, and afterward possesses the means of the borrower or the buyers of the borrower, or the heirs, and brought cash to the lender amounting to the debts, they can recover their property, even if it was in the possession of the lender for a good many years (B. M. 35).

15. If the lender destroyed or built and did not have benefit from it, it is two opinions if he can demand his expenses; if there was benefit from the building or destroying, the lender can swear how much he spent, and can receive his expenses. If the

benefit came from itself, for instance, the value of the real has increased, the lender is entitled only to the amount of the debt.

16. It is an opinion if the lender built or destroyed and the property increased, the property cannot be recovered to the borrower; and if the property increased from itself, can be recovered at the present price and if it has depreciated in value, the borrower must pay the whole debt, and the lender shall not lose (*Tur*).

17. If the lender made a form of agreement with the borrower, he shall not recover the real property when he will be able to pay the debt, the property cannot be returned, and the same rule applies if the borrower himself gave as payment the real property with his own will to the lender cannot be returned (*L. c.*).

18. If the court appraised to the lender the real property for his debt, and afterward they appraised the same real property to the debtor of the first lender, and the first borrower possesses means and he wishes to pay the money and have his real property returned, the property must be returned, because the first sold with the same privileges as he have to the second (*L. c.*).

19. If, however, by the first time the real property was appraised for 100 zus and to the other it was

appraised for 200 zus, or vice versa to the first one was appraised for 200 zus and to the other was appraised for 100 zus, the borrower can recover only for two hundred zus (L. c.).

20. If the appraised real property was sold by the lender or was made a gift to another, or it was given to his debtor with his own will, or the lender died and inherited it to his heirs, cannot be recovered. It is an opinion if the lender died, and he left only one heir can be recovered, and if there were many heirs and they divided and this field came to one in his part, cannot be recovered (Ramo).

21. If the real property was appraised to an unmarried woman and afterward she married, or the borrower was an unmarried woman and her lender collected her real property, and afterward she married, the husband is in the law considered like a buyer and cannot recover or be recovered (B. M. 35).

22. If the appraising sale was as error for instance, a guardian without compensation, was negligent by the article entrusted to him, and the court found him bound to pay for it, and they appraised his real property and gave it to the bilor of the article, and the latter sold it to another, or he died and inherited it to his heirs, and afterward the loss is found, it must be returned to the first one.

23. The same rule applies if the court appraised

the real property to the lender, for his debt and afterward it is found that the borrower has cash, the property must be returned, if the lender wants he can force the borrower to give him the cash. If, however, when they appraised the real, the borrower was poor and afterward he became rich, he cannot be forced to redeem the field (L. c.).

## CHAPTER CIV.

1. If a borrower has a number of debtors with notes, whoever's note dated first, he has the preference to collect first, either he collects real or personal property, even the note issued later, matured first, either the collect from the borrower, or from his buyers, the preference is with the one whose note is dated first (Tur.).
2. If the last debtor has collected before the first one, and even the first one saw it and was silent, it must be taken from him and given to the first (Kesuboth 94).
3. If B collects for his debt of the houses of R with the permission of the government, and they make an announcement for one day and afterward the first debtor came and wants to take the house away, and the later one claims that you did not claim it in the time of the announcement, therefore, you lose

the right. If the announcement was that everybody who has a claim on this real property shall come and claim it, and if he failed to claim his obligation, shall he lose his right, and if it is a rule of the government, the right is with the later one, and the same rule applies if a number of debtors command to attach a borrower and it is uncertain where is the first one, and the officer of the government testified on one that he is the first, he is believed, because the law of government is like the law of the Thora. If they announce that one who has claims on this real property shall come and claim, then if he failed to claim, he does not lose his right thereof (Tur.).

4. If personal property is collected for the debt, no preference is given to anyone, and even the later debtor collected from the personal property before the first, it cannot be taken from him, and if the later one collected the personal property, and the first debtor seized it from him, it must be taken from the first one and returned to the later (B. B. 44).

5. If the borrower possess debts with notes of other parties and even the first debtor seizes the notes from the borrower all the debtors of the borrower must share in the collection of the notes (Tur.).

6. If one borrower had a number of lenders and one lender took an order from the court to close the store of the borrower for his debt, this closing is not

considered in the law as collected, therefore, the first lender can collect from the personal property his share (*Tur.*).

7. The preference by real property is only when the real property was in the borrower's hands before the loan was made. If, however, this real property was bought after all the loans are made even if he obligated to each one, anything he will buy, no preference is given and all are equal in same, and if one collected, even the last one, it belongs to him (*L. c.*).

8. R borrowed money from B and wrote in the note, "Anything I will buy I am obligated to you," and afterward bought a field and loaned from another money, this field is obligated to the first debtor, and he has the preference to collect even afterward he made 100 other loans the first had the preference to collect.

9. If the borrower has a number of debtors, all dated in one day, or in the same one hour in such place where it is customary to write the hour on the note, no preference in collection is considered. Either real property or personal property, and whoever collects first he is entitled to them (*Kesuboth 94*).

10. If the court sold the real property of the borrower to collect for the first debtor, the later debtor cannot take the field away from the buyer. If, how-

ever, the borrower sold the real property and paid the first debtor, the later debtor is entitled to take it away from the buyer for his debt (*Tur.*).

11. If a borrower has a number of debtors, all dated in one day or in any way that no preference is given, for instance, by the collection of personal property and the fund is not sufficient for all the debtors, namely, the borrower had three debtors, to one he owes 100 zus, and to one 200 zus, and the third 300 zus, and the fund is only 300 zus the fund must be divided in three parts, each one is entitled to one part, and the same rule applies when the fund is less than 300 zus. If it is more than 300 zus, for instance it is 500 zus, each one must be given 100 zus and the balance of the 200 zus must be divided betwen the two later debtors, namely, the one that he owes 200 zus and the one he owes 300 zus, and the same rule applies even when there are 100 debtors (*Kesuboth* 93). Another judicial opinion stated in the case of the three debtors and the fund is 300 zus. It must be divided in six parts, one part must be given to the debtor of 100 zus and two parts to the debtor of the 200 and three parts to the debtor of 300, and so forth, it must be divided when 100 debtors are involved (*L. c.*).

12. In the above case each one must take an oath that he did not receive payment for his debt, even it is written believing in his note (*Rosch*).

13. If there are two debtors, one is with a note and the other is an oral debt, and the oral debt, the witnesses testify that it was made before the note debt, the oral debt has the preference to collect from the property belonging to the borrower (B. B. 171).

14. If the borrower has received a gift with a condition which was made that after his death the field shall belong to so and so, and his debtor has no other fortune to collect from except from that gift, and he demands from the court to collect from that fortune, even the first borrower is alive, the court cannot collect from the ground of the field, but from the fruit alone (Rambam).

15. If, however, the first one died and his debtor came to collect from the gift, he cannot collect nothing, even the borrower made the field as mortgage to him, only the field belongs to the second (L. c.).

16. If a house collapse and killed a man and his son or any of his legal heirs, and it cannot be ascertained as to who died first, and the son has a debt, and there is no other fund to collect from, the son and the lender claimed that the father died first, and inherited the estate to the son, and therefore, I am entitled to collect my debt from the estate on the son, and the heirs of the son claimed that their father died first, and afterward the grandfather, and they inherited the grandfather's estate; and there is no

fund to collect for the lender, the right is with the heirs, because the estate is in the possession of the heirs, possession is nine points in favor of the possessor (B. B. 157).

## CHAPTER CV.

1. If a borrower owes to two lenders or more and he has not sufficient funds to pay all the debts and one stranger seized personal property of the borrower for one of his debtors, and the other debtors claimed that money belongs to all equally, and even the seizer was appointed as agent by one of the debtors and he gave him a power of attorney, the seized amount must be divided equally to all debtors (Kesuboth 84).

2. If, however, one of the debtors seized the money an amount equal to his loan, with the idea to give it to the other debtor, the seized money belongs to the other because he has the right to seize the amount for himself, therefore he is entitled to win the change for the other (B. M. 9).

3. If to the seizer was the borrower owed 100 zus and he seized 150 zus to give the balance to the other debtor it is two different judicial opinions if it is effective or not (B. I. Schach).

4. If the borrower with his own will said to a stranger, win the article or give the 100 zus to so and so, my debtor, it belongs to whom he commands, even the winner did not recognize the other one (L. c.).

stranger seized the amount of the debt, from the

5. If the borrower had only one lender, and one borrower for the lender, it belongs to him when the borrower is a big spender or he is a poor man and even the date of maturity did not expire it is valid, the lender must had an acknowledged note or witness in such way that the borrower cannot deny the articles or the money get lost or stolen. By the seizer, it is two judicial opinions, one states that the seizer is responsible for it, and one states that he is not responsible (Tur.).

6. But, if the borrower said to the seized, take upon you the responsibility of the money or else return to me what you have seized because you are not believed to me, the right is with the borrower (L. c.).

7. If a bailee seized the article entrusted to him for another's debt, and the borrower has not other debts beside them, the seizing is valid, and even the bailor died, the debt can be collected from these articles and the release year cannot release such debt. If the lender is absent the bailee cannot attach the article entrusted to him for the debt, even the bor-

rower admitted it, because the law stated, that article entrusted must be returned to the bailor and if there is someone else that has a claim against this article, it can be demanded by the law, and if the bailee delivered the article to the lender he is free, even he was a bailee with compensation, because if he had returned to the bailor he must pay with them to the lender (L. c.).

## CHAPTER CVI.

1. If a lender came to collect with his acknowledged note in the absence of the borrower, if it is possible to send a messenger and to notify to the borrower he shall come to the court, for instance it is a journey that could be made to and from in thirty days, that must be done and must be notified, and the lender must pay the fees of the messenger and must be added to the debt, and if it is a far distance, making it impossible for a messenger to make the journey within thirty days to and from, the debt can be collected after the lender takes an oath, either the collection is made from real property or personal property. If it is written in the note believing that he can receive payment even in the absence of the borrower, he need not take an oath (Kesuboth 87).

2. It is an opinion that in the absence of the bor-

rower it can be collected only from himself and not from his heirs, only the lender must go to the heirs to collect (Rama).

3. The lender when he collected in the absence of the borrower, must bring three evidence, (1) he must acknowledge the note, (2) he must give evidence that the borrower is in another country, a distance that would not allow a messenger to make within thirty days to and from, (3) the articles that from he wish to collect belongs to the borrower (Kesuboth 19).

4. It is permitted to take as pledge real property in the absence of the borrower like it is permitted to collect in his absence (Tur.).

## CHAPTER CVII.

הַלְכָוֹת נִבְנֵת חֻכָּה מִהִתּוּמִים

### ORPHANS CAN BE FORCED TO PAY THE DEBT OF THE FATHER.

1. It is a command of the heirs to pay the debt of the father and they can be forced to pay, like the father can be forced when he is alive.

2. The above rule applies when the estate contains real property. If, however, the estate contains personal property the heirs cannot be forced to pay

the debt of the father, but it is a command to pay such debt.

3. This rule prevails by the law of the Thora, but the Geonim made an enactment that a debtor can collect from the heirs, even the estate contains only personal property, therefore, the heirs can be forced to pay the debt of the father, even it is an oral debt, and even the estate contained only personal property, and even the personal property was bought after the loan was made, and in the note is not written that he obligates everything that he will buy in the future, because the heirs is considered in the law, even the father (Tur.).

4. And, they are bound to pay the debt of the father, if the estate contains debts, what other parties were owed to the father, either they collect for the debt real property or cash.

5. If they inherit real and personal property and in the note is not specified that he can collect personal property, either in the lifetime or after the death, and the heirs wish to pay to the lender with real property, and the lender wish to collect personal property for his debt, the right is with the heirs (L. c.).

6. If the heirs did not inherit anything from their father, they are not bound to pay the debt of the father, even that is no command thereby.

7. If they inherited a certain sum and the loan contained among more than the sum inherited they not bound to pay more than the sum inherited (Ramo).

8. If the heirs claimed that the father did not leave anything and are not bound to pay the debt of the father from their own pocket, and the lender claimed positively the father leaves an estate, then the heirs must take an oath (hises) and they can be free. If the lender is in doubt with his claim the heirs can be only bound to take a ban that is true (L. c.).

8a. If the heir sold all the estate belonging to the father, the debtor of the father can collect from the buyers, even the heir wish to pay with his own real property, he can be refused because his own real property is not obliged for the debt of the father. If however, the heirs wish to pay with cash to the debtor of the father, and he shall not collect from the buyers, this is effective. Except when the father made the real property as mortgage to the debtor, then the debtor had the right to refuse to accept the cash (Tur.), (B. B. 140).

9. If the heirs sold the real property belonging to the father, and the debtor cannot collect from the buyers, for instance, it is sold to a recalcitrant person that is impossible to collect from him, it is two judi-

cial opinions, one stated that the debtor can collect from the money received for the sale, and one stated that it cannot be collected from the money (Tur).

10. After the enactment of the Goenim, that even if the estate contained personal property, the father's debt can be collected. If the lender seized the personal property belonging to the borrower after his death, even there are no witnesses for his debt, and if he did not seize it, he was not entitled to collect, but just now when he seized it, he is believed to collect on account of megy, because he can say that he never seized it, and he must receive an oath (Tur).

11. If the father owed 100 zus and the estate contained real property valued 50 zus, and the lender took away the real property for his debt and the heirs gave him 50 zus, from their own pocket, even they did not specify that they gave it for the real property, the lender cannot take away again the real property for the balance, and a later debtor cannot also take away the real property from the heirs for his debt, because it is like the first debtor collected the real property and they bought from him (Kesuboth 91).

12. If two brothers inherited from their father two fields, and each one took one, and a debtor of the father came to take away one field from one, they

cannot say, take one-half from each one, but he can take the one he chooses (B. K. 9).

13. If, however, they inherit from the father four fields, and each one takes two, and the debt amounts to the value of two fields, the lender cannot say, I will take two fields from the one I wish, but must take one field from each, except when the two fields belong to one was made as mortgage to the lender, and he promised him to receive pay from it (L. c.).

14. The father left an estate of cash and personal property and they divided it and the debtor came to collect. If the two brothers are present he must collect from each one one-half, and if one is absent he can collect all the debt from the one that is present, and he shall go to collect his half from the other brother (Rawad).

15. If the two brothers inherit real property and they divide it, and one sold his part, or gave his part as a gift to another, and a debtor of the father came to collect for his debt, he can collect half of the debt from the buyer, and half from the heirs (Tur.).

16. R said to heirs you owe me 100 zus, and they admit it before witnesses, and when R demanded the money, the heirs said, that we did not admit that we owe yourself, only we admitted that our father owes

you, and he did not leave estate from which to pay, and R claimed no, you admitted that yourself owes me, because the heirs, admitted and did not specify, therefore they must pay (Tur.).

17. If they admitted in the presence of one witness, and they deny that they did not admit it, they must take an oath to contradict the one witness. If they admitted that they admitted before the witnesses without specifying, but they claim that they did not mean to admit that they owe themselves, only on account of the father, they are bound to pay (B. B. 33).

18. If the father left personal property and they paid with it to the last debtor, the first debtor cannot recover from him.

19. R died and it is found in his day book written with his handwriting that he owes 100 zus to B, the heirs are not bound to pay, because maybe the father paid them, except the date of maturity is not due (Rasbo).

20. R was owed to B money and R died and the heirs wish to spend of the burial expenses high cost, then B had the right to prevent such expensive burial until they will pay his debt, and if the debtor collected all the fortune of the deceased for his debt and it is nothing left for the expenditures of burial he is

not bound to give for them, only he must be buried from the expenses of the Charity Treasury (Ramo).

21. If the relative spend money for doctors and medicine for the cure of the father and they wish to collect after the death of father from the estate of the orphans, if it can be proven through witness or other evidence, how much they spent, and they did not receive pay for them, they can collect if they cannot prove, and even the wife of the deceased admittd same, they cannot be collected from the orphan estate (L. c.).

## CHAPTER CVIII.

1. An oral debt cannot be collected from the heirs except in the three different directions: First, when the borrower admitted before he dies, and commend that he owed a certain sum to so and so. Second, that the loan was made for a certain date, and the date has not matured. Third, if the borrower was excommunicated by the court that he must pay the debt and he died during the time of excommunication in the above cases can be collected from the heirs without an oath (B. B. 176).

2. If, however, witnesses came and testified that their father owes to so and so 100 zus, that cannot be collected from the heirs, because maybe the father paid them (Tur.).

3. If the lender presented a note with the handwriting of their father, that he owed to him 100 zus he cannot be collected with it, because may be he paid them (Tur.).

4. If the lender died and the heirs came to collect from the heirs of the borrowers, and if the principles are the same as in paragraph 1, he can collect without an oath, even the borrower died before the lender. If it is not like the principles as in paragraph 1, even the heirs of the borrower did not claim anything, the lender's heirs cannot collect from them because the court must plead maybe their father paid them the debt (Tur.).

5. No debt can be collected from small orphans' estate before they reach the age of thirteen years, even the note was acknowledged by the court, and even it is written in believing, and it is written in all the conditions of the world, because possibly when they reach the age they have evidence or witnesses to destroy the note, except when the loan was in condition of the three principles written in paragraph 1, then if that is so, even it was an oral debt, it can be collected even from small orphans, when the testimony of the witness was examined during the life of the father, because testimony cannot be received in the presence of a minor (B. B. 174; Erichen 22).

6. If the lender died and the heirs came to collect

the note from the borrower, and he claimed that he paid the note to the father, and they said they know nothing about it, the court must command to the borrower that he must pay, if he claims that he wants to have from the heirs an oath, if it is written in the note, that the borrower gave believing to the lender and to this heirs, they can collect without an oath, and if it is not written in such condition, then the heirs must swear holding a holy thing in their hand, that their father did not command anything to them about payment of the note, and they did not find any receipt among the notes, that the note was paid, and even the heirs was a small baby laying in the carriage at the time the father died, he must swear when he becomes of age, and then he can take the money (Tur.).

7. If the minor orphan has a guardian appointed by the father, and he attend the collections for the minor he must receive an oath that the father of orphan did not say to him anything and did not find any receipt among the notes that this note is paid, then he is entitled to collect. If the guardian was appointed by the court he must only take an oath that he did not find any receipt among the notes that it is paid (L. c.).

8. If the orphan (minor) has older brothers, we do not have to wait until he grows up to collect the

debt, but the oldest brother can receive the oath and can collect all the debt and give to the minor orphan his share. If the minor orphan died, he can swear and receive his share and the minor's share (L. c.).

9. If one of the heirs admitted that the father said to him that the note was paid, and the other said that the father did not say anything to him, if the note is presented by the one who admitted that it was paid, he is believed on all the amount, because on account of megy, he had the right to destroy or burn it, and if it was presented by the others, the admirer is believed to lose his own share only (L. c.).

10. Another judicial opinion states that even when the note is presented by the admirer he is only believed only to lose his share, and the other can collect his share with an oath.

11. If the heirs that have to receive an oath, and collect the note, should they die and they left heirs, it is two judicial opinions, one states that the heirs cannot swear and receive the money, and one stated that even they can swear that their father did not say anything to them nor neither did the grandfather say anything about the payment of the note, and they can collect the amount of the note thereafter (L. c.).

12. The aforesaid rule that the heirs of the lender can swear and receive payment from the heirs of the

borrower, holds good when the lender died and afterward the borrower died. If, however, the borrower died first, and afterward the lender, the heirs of the lender either his sons, or brothers or any heirs cannot collect anything even with an oath, because since the borrower died the lender was found bound on an oath to the heirs of the borrower, according to the law who came to collect from the estate of orphans, and no man can inherit to his sons such money that he is not able to collect without an oath (L. c.).

13. If the judge violated and gave an oath to the heirs of the lender, and they collect the debt, it cannot be taken from them, and the same rule applies if the heirs of the lender seized the amount of the debt from the heirs of the borrower it cannot be taken from them, therefore a note from orphans presented for collection in such event that the borrower died before the lender, the note shall not be destroyed or collected (Schvuss 48).

14. Even if a surety man was given for this debt, and the borrower died before the lender, the heirs of the lender cannot collect from the surety man, when the borrower left some estate; either real or personal property, because if they collect from the surety man, then the surety man will collect from the heirs of the borrower, because the father left them an estate, therefore the heirs of the lender cannot collect

from the surety man. If, however, the borrower did not leave any estate, then the heirs of the lender can collect from the surety man (L. c.).

15. If the note was a pledge on real property and the lender had taken possession of it, he is entitled to collect from the pledge without an oath, and therefore, even the lender died his heirs can collect (Kesuboth 72).

16. If a lender or his heirs came to collect from the heirs of the borrower and they claim that the father said to us that he never loaned on that note, the lender or his heirs can collect without an oath, and even the borrower died and afterward the lender died, because whoever claims that he did not loan is surely not paid (L. c. 88).

17. If a minor orphan presented a note from his father for collection, and the borrower presented a receipt for the note, the note cannot be destroyed and cannot be collected until the orphans become of age, because maybe the receipt is false, and therefore, the borrower did not present it during the life of his father, and even there is witnesses testify that they remember the payment, and even the receipt is acknowledged by his signature, and they testify with a mark in the receipt, for instance, a hole is in such and such letter, the testimony cannot be received, because it is in the absence of the plaintiff (Tur).

18. We cannot collect from the estate of heirs even adults without oath. If the lender collect without an oath, he must be excommunicated until he receives the oath (Giten 50).

19. From the estate of heirs, even by adults cannot be collected only from the third class, real, even the father made a condition with the lender that he shall collect first or second quality, the condition cannot be fulfilled by the heirs except when it is specified in the note that he can collect first or second quality from him or either from his heirs (L. c.).

20. If the lender seized second quality during the life of the father, for instance, the borrower loaned 100 zus from the lender, and afterward the lender loaned 100 zus from the borrower, and the borrower died, and the heirs of the borrower wanted to collect from the lender second quality of the real property, and they want to give the lender for his debt the third quality, then the lender has the right to attach his second quality for his debt (Kesuboth 110).

21. If, however, the seizing was after the death of the borrower, for instance, the lender bought the second quality after the death of the borrower, the seizing is void (L. c.).

22. If a plaintiff came to collect for damages of the father by the heirs, and if the heirs are small

orphans, then he can collect from the third quality, and if they are adults it can be collected from the first quality (Tur).

## CHAPTER CIX.

1. When the court comes to sell the real property belonging to the orphans it must be appraised, and afterwards must be publicated thirty days, day after day, and if it is publicated only Monday and Thursday, it must be publicated sixty days. The publication must take place in the morning and in the evening, when the workmen goes to and from work, and anyone who would like to buy the field, he has the right to take an expert with him to examine the value of the field, and must be notified how many bushels are gathered from the field every year, and how much she is appraised and for what reason she must be sold, either for payment for a debt, or payment for a marriage contract. If the lender says, I will receive the field for my debt without appraisal and the heirs claim no, the court shall appraise it, the claim of the heirs must be heard.

2. The writing of the execution of the property of the orphans, either adults or minors must be written, so that we the judges recognize the real property belongs to so and so, the deceased, and we give per-

mission to the lender to take possession of same for his debt, and if they did not write so, the execution is invalid and the lender is not permitted to eat the fruit, even after the day of publication is finished (Kesuboth 104).

3. If the court sold the real property belonging to the orphans without announcement, the deal is void, and it must be announced, and thereafter can be sold (L. c. 100).

4. If the court sold the real property belonging to the orphans, for the debt of the father, the responsibility from the buyers is of the estate of the orphans (L. c. 97).

5. If the court announced accordingly and appraised according to the law, and even they made an error and sold the value of 100 zus for 200 zus, or the value of 200 zus for 100 zus, the deal is valid. If, however, they did not make the appraising or announcement according to the law, and they made an error either with one-sixth more or with one-sixth less, the deal is invalid, if it is less than one-sixth the deal is valid (L. c. 99).

6. If the court sold the real property in the time that it is not essential to announce, or in some place that is not customary to announce, and they made an error, and sold less than one-sixth or more than one-

sixth, the deal is void, even they announce it, should the court wish the sale not to be void, and they satisfactory to make the error good from their pocket, they can do so if it is less than one-sixth, the deal is valid, and the error is released even they not announce (Rambam).

7. When is permitted to sell the real property belonging to the orphans without announcement, for burial expenses, or for the support of wife and children, or for paying tax (Giten 52).

8. If the guardian or the court borrowed money for the use of the orphans the court can sell the real property of the orphans without announcement, and pay the debt and if the court sold and the responsibility from the buyers is of the estate. When it is taken from the buyers afterward, the court has the right to sell the property belonging to the orphan without announcement and settle the buyers (Rosch).

9. The above rule if the court made an error in selling for more or less than one-sixth, the deal is void, holds good when they put the lender to the real according to the praising of the court, if however, the court sold real property belonging to the orphans to another, even the value of 100 zus for 200 zus the buyer cannot retract, and the same law applies to

the guardian who sold the real property of the orphans (Tur.).

10. If the court sold the real property through an agent, and the agent made an error even less than one-sixth, the deal is void. If, however, the error was in favor of the agent, the benefit belongs to the principal (Tur.).

## CHAPTER CX.

1. From the estate of minor orphans a debt cannot be collected until they become of age, thirteen years, except with a marriage contract, of a widow, can be collected, even of such estate (Tur.).

2. If there are small orphans and adults, and it is a debt from the father to pay, the court must appoint a guardian for the small orphans and divide the estate with the oldest and the debtor can collect the share from the oldest, and the share of the small orphans he must wait until they become of age (L.c.).

3. The reason for not collecting a debt from small orphans, because it is possible the father gave the lender some security for the debt, therefore, if the lender seized the amount of the debt from the estate after the death of the father, not in the presence of witnesses, in such event that he can say that he

bought the articles, on account of megy, he is believed that he seized it on account of the debt, and the debt is unpaid (B. B. 33).

4. If for the debt of the small orphans he had a surety man, the lender can collect from him, although he cannot collect from the small orphans, but can collect from the surety man (Rambam).

5. Small orphans that their father commanded and said, shall he give a field or 100 zus to so and so, the court must appoint a guardian to try the case in favor of the orphans, and the same rule applies when the father said give that 100 zus or that field to so and so, the court must appoint a guardian and it must be given, and Maimonides hold that in such event it is not necessary to appoint a guardian (Erichen 23).

6. If an oldest heir gave all the estate to an orphan minor, and a note of the fathers was presented for collection, the court has the right to collect from the estate (B. K. 112).

7. Small orphans, if it is found that the real property does not belong to them only it was robbed by their father, the court must investigate this matter. If they find that it was robbed, the real property must be returned to the real owner, and Maimonides holds that a guardian must be appointed to try the case (Erichen 23).

8. The same rule applies if a small orphan took his servant and went to another's field and took possession of it, we shall not say we shall wait until he becomes of age, but the field must be taken at once from the minor, and when he becomes of age, if he can produce evidence, then he can start a trial (B. K. 112).

9. Small orphans, when their father admitted in a note with his handwriting, of a personal property that is in his hands, that belongs to so and so received in commission for business, or a storage, the personal property must be taken from them (Tur.).

10. If their father robbed another, they are bound to pay either they eat the robbed thing or not, either the father left to him an estate of real or personal property (B. K. 112).

11. If the court or the guardian of the orphans made a loan for the use of the orphans, they can collect from their estate and can be sold them without publication and the responsibility for the sale is of the estate (L. c.).

12. If the orphans themselves borrow money without the permission of the court that cannot be collected until they become of age, and a guardian cannot be appointed to receive testimony of the witness (Tur.).

13. If a man made a will and left small orphans if it can be received testimony in the presence of the guardian it is two opinions if it is valid or not. According to the one stated that is not valid if one of his deathbed wish to make a will at the time when he left small orphans, it is the legal way to deliver the words of the will to the court or the witness will write the command in a note and they will sign it at the time of the father live or himself write with his handwriting the will and the court recognizes the signature (Rambam).

14. The court is permitted to act himself as guardian in the estate of the orphan, and they permitted to arbitrate in a claim belonging to the orphans (L. c.).

## CHAPTER CXI.

### הֲלֻכֹת נְבִית חֹב מַנְכָסִים מִשׁוּעֲבָדִים

1. If one borrowed money from the other as an oral debt, it cannot be collected except only from the fortune that is in the hands of the borrower, but not from the buyers or the receiver of the gift, but in what is in the possession of the borrower he can collect, either real or personal property, and even he bought it after the loan was made (B. B. 157).

2. If the loan is made with a note he can collect from the buyers, and the receiver of the gift what they bought or received the real property after the loan is made, and even it is not specified in the note that shall be collected of conveyed property. If, however, it is specified that he shall not collect from the buyers or the gift receivers, the condition must be fulfilled and he cannot collect (B. M. 15).

3. If the borrower received a gift with a condition that no obligation shall become obligated of them, the condition must be fulfilled and the debtor cannot collect from it, even the borrower wrote in the note that he obligated anything that he will buy. The debtor cannot collect from the gift (Rochs). If the borrower bought a field and made a condition with the vendor of the field that no obligation shall be obligated, the debtor can collect from it (Tur.).

4. If a father gave real property as gift to his son, on condition no debtor shall have obligation on this field, and the father had no other sons, afterward the father died, the debtor of the son can collect, because afterward the real property belongs to him as inheritance, not as gift (L. c.).

5. If one borrower has a number of debts, and the court sold his real property to pay to the first debtor, the other debtors cannot take away from the

buyers this real property. If, however, the borrower himself sold the real property to pay the first debtor, the other debtors can take away the real from the buyer (Rasbo).

6. If a guardian sold real property belonging to orphans, and the guardians themselves had a debt to collect from the estate of the orphan, he has the right to collect from the buyer to whom he sold the real property himself (Ran).

7. If a borrower had a number of debtors and he has not sufficient funds to pay all, only enough to pay one debtor, the first debtor, even it is written in his note, believing he cannot collect from the borrower until he receives an oath that he did not receive any payment on account of this debt (L. c.).

8. The above rule of collecting from the buyers of the borrower holds good only when the borrower has nothing from which to collect, if, however, it is found by the borrower in his possession even third class real property, it cannot be collected from the buyers or the gift receiver (Gitin 48).

9. Therefore, if the borrower commanded give a gift of 200 zus to R, and 300 zus to B and 400 zus to C, and there is not sufficient fund for all, *i. e.*, there is only 873 zus and there is a deficit of 27 zus, therefore, the fund must be divided in nine parts, two parts must be given to the gift receiver for 200, three

parts to the receiver of 300 and four parts to the receiver of 400 zus; for instance, the 200 zus will balance 194 zus, and the 300 zus will balance 291 zus, and the 400 zus will balance 388 zus. If afterward a debt is found on the giver of the gift, for instance, the amount is 90 zus, each one must pay according to the amount of his gift, for instance, the 200 zus must give 20 zus, and the 300 zus must give 30 zus, and the 400 zus must give 40 zus (L. c. 50).

10. If, however, the borrowers stated 200 zus shall be given to R and afterward 300 zus to B and afterward 400 zus to C and the fund is not sufficient for all, who is written first in the note he has the preference to collect, therefore, if it is a note of the borrower came to collect he can collect from the last one, if there is not enough he can collect from the second, if it not enough he can collect from the first (L. c.).

11. R commanded on his deathbed to give 100 zus to B and the heirs sold all the fortune and B had nothing to collect from the 100 zus, B can collect from the buyers, and the heirs are not believed to say, that they paid the 100 zus so long the note of the will is in the hand of B (Rochs).

12. If the heirs sold some part of the estate of real property, and left some part unsold, and the debtor of the father came to collect, he cannot collect

from the buyers, only he must collect from the unsold property left by the heirs (L. c.).

13. If the borrower sold the real property in this city, and he had some real property in another city, then the debtor can take away from the buyer and he could not say to the debtor, go and collect from the unsold property in the other city because it is not in the same city, and even the borrower himself cannot make the lender collect from the real property that is in another city (Tur.).

13a. If the buyers left unsold property in the possession of the borrower, and they become spoiled the debtor can take away from the buyers. If, however, the unsold property is not spoiled, but the lender released it, and promised and made a form of agreement that shall not collect from the unsold property, he cannot collect from the buyers, because the buyers can say, I left you a place from what to collect (Kesuboth 95).

13b. Even the time of payment matured, and the lender was negligent to collect the debt, and gave payment from the unsold property, and afterward the unsold property became spoiled, he can collect from the buyers (Rasbo).

14. If it is two or three buyers, and they bought it in the same date, the lender has the right to col-

lect all his debt from one, and need not to trouble to take half field from each one.

15. If, however, each buyer has bought a number of fields and the amount of the debt contained two fields, he must take a field from each one (Tur.).

16. If the buyers that bought by the borrower sold the field to another, and the other to another continued until 100, the first lender has the right to collect from the last one, and he could not say what you did not claim the debt from the first one (L. c.).

17. If the borrower sold his real property and the lender signed as witness in the bill of sale, he does not lose his right on account of it, because he can say the other one is more intelligent than the first one (L. c.).

18. R bought a house from B and C had a mortgage obligation on this house, and C was present when R bought the house, and he did not present his note, and also R destroyed and built the house, and he appointed C as the supervisor for the building, and afterward C presented his mortgage, R claimed why did you not notify me before I bought, C does not lose his right on account of being silent (L. c.).

19. R loaned B money as oral debt and B loaned to C a debt with a note, and C sold all his fortune and R came to collect from the buyers that they bought

by C with the note that B has on C, and B admitted on that debt, the right is with R (L. c.).

20. If the borrower had no real or personal property from which to collect but only notes that some other parties owed to him, and the notes are in his possession, the lender can collect from it, and even the borrower died and the notes came in the possession of the heirs, and even the debts are made after he borrowed the money from his lender, and the debtors bought the real property, after the debt is made, he can collect from them and from the heirs (see Chap. 86, L. c.).

21. If the borrower sold the notes or made a gift to others, or his debtors sold his real property after the loan is made, he can collect from them (L. c.).

22. If one borrower had two lenders, and they came at one time to collect, from his debtors, if the borrower lend to his borrowers, afterward he made the loan from those two, they must share the amount of the debt and if one seized it, it cannot be recovered from him (L. c.). If the loan is made before the borrower loaned from those two, or before he loaned for the last one, all belongs to the first one (Tur).

23. R had a note from B and sold the note according to the law to C, and when C came to collect the note D presented a note that he had from R

dated before the note that R had from B, and he claimed that the note that R gave to C that is the money from his debtor and wins the collection on account of being preferenced. The right is with D because his note is first (L. c.).

## CHAPTER CXII.

1. The lender cannot collect from the sold property except when the property was in the possession of the borrower at the time when the loan is made, and the borrower sold it afterward. If, however, the borrower bought the real property afterward and sold it, the lender cannot collect from them, but when this real property is in the borrower's possession, the lender can collect even it was bought after the loan was made (Tur.).

2. If the borrower obligated himself in the note that the lender shall be entitled to collect from his real property, that which he bought and is yet to buy, then if the borrower bought some real property and sold it, the lender can collect from that property (L. c.).

3. If the borrower did not write that the lender shall collect from the real property that he will buy, and the borrower sold his real property after the loan is made, and the lender wishes to collect of the

property of the buyers, and he claimed, that this property was in the possession of the borrower, and the buyers claim that this property was bought and sold after the loan was made. It is two judicial opinions, one states that the lender must prove that the real property was in the possession of the borrower when the loan is made, and another opinion stated that if there are witnesses that the borrower bought that real property and sold it, then the lender must bring witnesses that the borrower bought it before he obligated himself. If, however, there are witnesses that the borrower was in possession of that real and it was his, then the buyers must bring witnesses that the borrower bought it afterward, and when he bought. If he cannot produce such powers, the court can consider that the real property was the borrowers and, therefore, the lender is entitled to collect from it (L. c.).

4. If two lenders presented, each one his own note of one borrower, and not in one of them is written that he is entitled to collect from the property he will buy, and the fund is not sufficient to pay both debts, and the first one claimed that when his loan was made, the real property was already bought, and the latter one claimed that after the two loans were made, the borrower bought the real property, and therefore, the real property is obligated to the two and there are no witnesses. There is two judicial

opinions, one states that they must share the half which is claimed and one entitling to three-quarters, and the other to one-quarter, and one opinion states that if there are no witnesses, when the borrower bought it, the real property must belong to the first debtor, and if there are witnesses that he bought it, but are uncertain when he bought it, then the one-half must be shared.

### CHAPTER CXIII.

1. The lender cannot collect from personal property, that the borrower sold or gave as a gift to another, even if the property was in his hands at the time the loan was made, and even if the lender notified the borrowers shall not buy the personal property, the lender cannot take it away after they bought it.

### CHAPERT CXIV.

1. If the lender knew the buyers that bought from the borrower after the loan was made, he can take away from them and the court must destroy the judgment note and they must write an execution of the real, and in that execution must be notified that the judgment is destroyed (B. B. 169).

2. When the lender found the buyer he can be forced to attend the trial with him, and the buyer cannot say, "You go to the borrower, and if he will find liable and the court will write execution, then I will pay you," but he must go himself to the borrower and force him to go to court with the lender, should the borrower be within one day's journey, he must be notified (*Tur.*).

3. If the buyer wishes a granted time to look for the borrower, he can be given 30 days, and the decision may be rendered correctly (*L. c.*).

4. If the buyer would like to pay to the lender in cash he is permitted to do so, and the buyer can collect the same amount from the borrower. If, however, the real property was made a mortgage with the stipulation that he shall be entitled to collect only from the real property, the buyer cannot settle the lender with cash (*L. c.*).

5. If the buyer bought two fields one after the other, and each one for 100 zus, and the debt amounted to 200 zus, and the lender took the first field for 100 zus, and when he came to take the other field the buyer brought two hundred zus cash, and said to the lender if you wish to take the first field for the two hundred zus, all right; if not, here is 200 zus cash and we are settled, the right is with the buyer; and if the lender was satisfied to receive the

first field in two hundred zus, the buyer cannot collect from the borrower any more than the 100 zus (Kesuboth 91).

6. After the note of execution was written, then the court appoints three expert appraisers in real property to the field and they appraise according to his amount of his debt from the fund of the real, and one-half from the improvement of the real, on the present price, and they must be publicated 30 days, and afterward the borrower must receive an oath that he has nothing, only when the borrower is in the country an oath can be granted, and the lender must swear, holding a holy thing in his hand, that he did not receive payment, and did not release the debt, and he did not sell the debt, and must combine in his oath that it is not a trust note, and they must write in the title—afterward the court gave title to the lender in the real of the borrower—that they recognized that the real belonged to the borrower, and they must write in the title that they destroyed the execution note (Rambam).

7. If the court appraised the real property for the lender and they made an error in the appraisal, even a small amount, the sale is void (L. c.).

9. If the buyer or the lender outbids each the other, the field must be given to the highest bidder, even to the buyer. When the bid is accepted the

amount will be enough the whole debt to settle. If, however, the buyer's bid is not enough to cover the whole debt he cannot be accepted, and the field must be given to the lender (*Tur.*).

10. If the lender said I will receive the real property for the whole debt without appraising of the court, and the buyer said no, but the court must appraise, and I will give according to the appraisal, the buyers' plea is not effective (*L. c.*).

## CHAPTER CXV.

1. When the lender came to take away the real property from the buyer, and the borrower wrote in the note that he is obligated that what he will buy, then he can collect from the improvements of the field, either the improvements was from itself, for instance, trees are grown on the field, or it increased in value, either the improvements came through expenses; if the improvements came from itself, he can collect from all the improvements, and if the improvements came through expenses, he can collect one-half from improvements that is more than the expenses. And the buyers can collect the fund from the estate of the vendor even from sold or gift property, that he sold after the sale was made, but for the improvements that the lender

took away from him, he can collect only from unsold property (B. M. 15, Giten 48).

2. The fruit that the buyer already ate cannot be collected, but the fruit that is on the field, even if they are ripe and ready to be cut, the lender can collect from that, like he can collect from improvements (L. c.).

3. If the buyer wishes he can pay the lender with cash, either from the field, either from the improvements, when a mortgage was not made. If, however, the borrower made a mortgage and specified that the lender shall collect his debt only from this field, the buyer cannot settle the lender with cash (L. c.).

4. If the lender collect from real property for his debt, and one piece is left from the field, if the piece can be useful for the buyer, for instance, if it is large enough so that nine gallons of seeds are necessary for planting, or in a garden is enough for one-half gallon of seeds, then they can use it in partnership. If a smaller piece is left, then the lender must take the small piece, and pay the buyer in cash for it (L. c.).

5. This above rule applies only for the buyer. If, however, the field was given as a gift, and the field was improved, on account of the gift received

expenses, the lender cannot collect from the improvements, but the field must be appraised what it was worth at the time he received the gift, and the amount can be collected, not more (L. c.).

6. If, however, the improvements derived from itself, the lender can collect even the improvements. If, however, the gift giver took the responsibility from the gift receiver in case a debtor should take the field away, he will stand good for them; then the lender can collect for his debt, even from the improvements that came through expenses (Tur.).

7. The same rule applies if orphans improved their estate through expenses, the lender cannot collect from the improvements. If, however, the improvements came through itself, the lender can collect from it (Rambam).

8. If the debtor came to collect from the orphans' improvements, and the orphans claimed that improvements developed through their expenses and therefore you are not entitled to collect from it, and the lender claimed maybe your father made the improvements, the orphans must prove that they made the improvements (B. M., 110).

9. If the orphans brought evidence that they made the improvements, the improvements and the expenses must be appraised as to value; and if the

field was made a mortgage to the debtor, the orphans are entitled to the smallest amount, *e. g.*, the improvements are valued at 200 zus, and the expenses were 100 zus, the orphans are entitled to 100 zus. If the improvements are valued at 100 zus, and the expenses 200 zus, the orphans are entitled to 100 zus. If, however, the field was not made as mortgage, and the orphans are satisfied to settle the debtor with cash, they are entitled to do so. If the orphans wish, they can take for the value of the improvements a piece of real property (*L. c.*).

## CHAPTER CXVI.

1. The buyer, when the field was taken from him, the court must write an execution note, which way he took it from him, for the debt of the seller, and the buyer has the right to collect the amount from the seller (*Kesuboth 91*).
2. If the real property increased in price, *e. g.*, at the time he bought the real it was valued at 500 zus, and at the time when the execution was made, the value increased to 1000 zus, or at the time when it was bought it was valued at 1000 zus, and at the time when the execution was made it was worth 500 zus, or at the time when it was bought it was valued at 1000 zus and it was bought for 500 zus. For all of

the above, he can get a judgment on the vendor for 1000 zus (Tur).

3. The same rule applies when the first buyer came to collect from the buyer that bought after his transaction is made.

4. If the buyer bought the real property from the seller, and it was specified that in case the real property will be taken for his debt the seller shall not be responsible for it, and the buyer requested by the lender that he shall give him the power of the note to be able to collect the debt from the borrower. If the real property was already taken, the lender cannot give any power of attorney and he cannot sell the note to him, because the obligation of the note is released and was made void, but before the real property was taken the buyer can demand from the lender that he shall give him his power of his note to collect the same amount from the borrower, but no execution can be written because, when he bought it was specified without responsibility (Tur.).

## CHAPTER CXVII.

### הלוות אפוחיקי

1. If a borrower made his field as mortgage to the lender, and he wrote in the note that in case he will not be able to pay the debt in cash, he shall collect

it from the field, and the field becomes overflooded or some other accident occurred which made the field not worth the money to the amount of the debt, the lender can collect from other real property, even when the real is sold to another, he can collect from the buyer (Giten 41).

2. If, however, the borrower specified with the lender in case he will not be able to pay the debt he shall collect only from this field, he cannot collect from any other property, and if this field was sold to another, and the debtor wishes to collect from this real for his debt, the buyer cannot settle the debt with cash without the consent of the lender, because it was specified he shall not collect only from this field (Giten 41).

3. If a borrower made a field as mortgage to the lender, and the borrower sold the field, the deal is valid, and when the lender came to collect, if he did not find unsold property, he can collect from this real property. This rule applies when the transaction of sale is made for a certain length of time. If, however, it was made forever, the sale is void. This law is stated by Maimonides; the other authorities hold that even if it is found by the borrower unsold property, he can collect from this field, because it was specified that if he should not be able to pay in cash, he must collect only from them, and if the

buyer sold it, the deal can be valid until the time of the execution, not longer (B. M. 15).

4. If the borrower gave the real property as pledge to the lender, the same rule applied like a mortgage, if it was specified that he shall not be able to collect only from the real. This same rule of a mortgage, when it was specified, prevails (Tur.).

5. If a borrower made as mortgage, an ox, or other personal property, and afterward he sold it, the lender cannot collect from them, even the mortgage was written in a note, and even the buyer knew that it is mortgaged to the lender, it cannot be taken from him, because it is made for the welfare of the business market, because if the lender will have the right to collect from personal property everyone will fear to buy personal property for fear that there is a mortgage on it (L. c.).

6. And the law of previous collection does not exist by personal property, *e. g.*, if a borrower had two lenders in equal debts, one is previous than the other and the borrower made the personal property as mortgage to the first one and the later debtor seized the personal property to collect his debt, it cannot be recovered from him (Tur.).

## CHAPTER CXVIII.

1. If the borrower sold his real property to two buyers, one after the other, and the lender wrote a release to the second buyer that in case the borrower shall not be able to pay the debt, he shall not take away from him the field; and if they made a form of agreement (kinyon) the lender cannot take away the property from the first buyer, because he can say, I left you a place to collect from your borrower, and you harmed yourself because you released the other buyer (*Kesuboth* 95).

2. If the borrower sold a field to a buyer, and afterward he sold another field in the same value to a second buyer and the lender wrote to the second buyer a release that in case if the borrower should fail to pay the debt, the field shall not be taken away from him for the debt, and they made a form of agreement, the lender can take away the property from the first buyer, and the first buyer can take away the property from the second buyer that he bought afterward, and the second buyer can take away the real from the lender, because he released him, and the first buyer can take away from the second buyer, etc., until they will make some arbitration to each other (*L. c.*).

3. If the borrower owed 100 zus and the lender wrote to the second buyer a release in case the borrower will not be able to pay, the field shall not be taken away from him, and the first field was found that it was robbed by the borrower from another man, the first buyer can take away the real property from the second buyer, and the lender can take away the property from the first, and the second buyer can take away the same property from the lender, because on account of his release, etc., until they make some arbitration for each other (L. c.).

## CHAPTER CXIX.

1. R sold all his fields to B at one time, and B sold one field to C of the second class quality, and no other second class real was left in the hands of B, and according to the law, the debtor is entitled to collect from the second class. Therefore, when the lender of R came to collect from B, if he wish he can collect from the second class of C, and if he wish he can collect from the property left in the hands of B, even it is first quality, he can collect from it (B. K. 8; Kesuboth 92).

2. If, however, C bought first quality or third quality real, and left second quality in the hands of B the debtor cannot collect from C, because he can say, I left you a place from whom to collect in the hands of B (L. c.).

## CHAPTER CXX.

1. If the lender demands his money of the borrower, and the borrower threw the money in his presence, and the money went lost, the borrower is liable to pay other money until the lender receives it with his land, and even the lender commanded him to throw the money that you owe me over here and he threw it and went lost, he is also liable. If, however, it was specified that he shall throw the money and be free, and even the borrower was standing far from the lender, and he threw the money, and the money went lost before it came in his hands, the borrower is free, because he commanded him to do so (Gitten 78).

2. These above rules apply when the lender did not refuse the receiving of the money. If, however, the borrower said here is your money, and the lender refused to receive it, and the borrower threw the money in his presence, and it went lost, if it is such place that it is permitted by the law to pay a debt (see Chapter 74), the borrower is free, because the payment that is made by force is considered as paid (Erichen 32).

4. If the borrower said to the lender your money is silent and bound in my house, come and take it, and the lender refused to take it, and the money

went lost or was stolen, without the negligence of the borrower, the borrower is free, and some other opinion states that he is not free (B. M. 49).

5. If the borrower paid the debt to the wife of the lender, or to one of the members supported by his table and who are of full age, and who is of a sound mind, he is free of payment when it is paid to their hand.

6. R was owed B 100 zus, and when the time of payment arrived B said to R keep the money for business to share the profit with me, and afterwards the money went lost by accident in the hand of the borrower, he is bound to pay for the whole amount, because it was placed in his responsibility before, and it cannot be changed on account of his promises (Ramo).

## CHAPTER CXXI.

הלוות העושה שליח לנבות חוב

LAW TO APPOINT AGENT TO COLLECT DEBTS.

1. If the borrower sends the amount of the debt through an agent, and the same was lost, if the lender commanded to send the debt through the agent, the borrower is free, even if the lender did not say verbally, only he sent him a written order, stating, "Send

me my debt through the agent," even the appointed agent is a minor, or deaf and dumb, or an idiot, and even the lender did not mention the name of the agent, only he wrote in his order to the borrower: "Send me the money through any one you wish," and the borrower sent the money through a trustworthy, honest person, and in the safest way, like people usually send money, the borrower is free (B. M. 98).

2. If, however, the borrower sent the money through an untrustworthy person or in a dangerous way, and the money was lost, the borrower is bound to pay, because he was negligent in the way he sent it, and in such way he was not authorized (L. c.).

3. Although the lender did not say to the agent, "You say to the borrower shall he send through you the money to me," but he says in the presence of witnesses, "I have money in the hand of R. Go and say to him that you make up your mind to go to the city of the lender and if he will give the money to you bring it to me" and the borrower gives him the money, and on the way the money gets lost, the borrower is free (B. K. 104).

4. If, however, the lender does not appoint him as agent, but he says to him, "I have the money in the hand of R, and he has not sent it to me; perhaps he had no messenger to send it by, therefore, go and

visit him; perhaps he will send it through you to me." And the borrower gives the money to him and the same was lost, the borrower is liable to pay (L. c.).

5. If the lender does not appoint the agent in the presence of witnesses but only gives a man his signature for identification that he had a conversation with the lender, and he received the order to bring him the money and he came to the borrower and says, "B sent me to you to get his money for me to bring to him, and here is his signature," and witness testifies that is the lender's signature, but the witness did not testify that the lender appointed him as agent, and the borrower sends the money through him, and the money gets lost, the borrower is liable (B. K. 104).

6. If the lender or the bailor sends a written order in his own handwriting to the borrower or to the bailee, "The 100 zus which I have in your hand, send them to me through B," and the borrower sends the same and the lender pleads, "I did not write or send for it," the borrower must take an oath (hises) that he received the written order from the lender and therefore he sent the money and he is free (L. c.).

7. If, however, the written order is not the handwriting of the lender, or the borrower did not know the handwriting of the lender, even though it is written in some secret identification, between him and

the lender, if the lender pleads and stated that he did not send the written order, but that it was a forgery to the borrower or the bailee, the latter is bound to pay. An opinion states that the lender must take an oath and afterward he can receive payment of the borrower (Tur).

8. If the lender claims that it is not his handwriting, and there is no witness to acknowledge that it is his handwriting, and the borrower claims that he recognizes that it is the lender's handwriting, if this money was in trust to him not in the presence of witnesses, because he can plead that he never received it, or that he received it and returned it, therefore he is believed with his claim that it is the lender's handwriting and he had the authority to give the money to the agent, but he must receive an oath and he is free. If the debt was in the form of a note the borrower is not believed and he must pay the note on demand after the lender will receive an oath that it is not his handwriting.

9. When the money was lost by the agent by accident and the borrower claims, "Let the agent swear that it is lost by accident," that is effective and the agent must do so (Tur).

10. If the lender admitted that it is his handwriting but he said to the agent, "I do not believe you that the money was lost by accident and I do not be-

lieve the borrower that he gave it to you," the borrower or the bailee must receive a ban that he delivered it to the agent, and he is free. And the agent must receive a guardian oath and he is free also (*Tur*).

11. The above rules hold good when the agent admits that he received the money and same was lost by accident. If, however, he denies it and claims that he delivered the loan to the lender and the lender claims that he did not receive it, the agent is not believed, even if there were two agents they are also not believed, because they are interested in the case (see Chap. 37), the agent must receive an oath (*hises*), and is free and the borrower must receive a ban that he delivered it to the agent, and he also free (*Kidushin* 43).

12. If the agent claimed that he did not receive anything from the borrower, and the borrower claimed that he delivered it to the agent, then the agent must take an oath (*hises*) in the presence of the borrower, and he is free, and the borrower must take an oath in the presence of the lender and the agent, and he is free also.

13. The above rules hold good when the lender appoints an agent to bring him the loan, if, however, the agent was not appointed by the lender, but the borrower said to him: "Carry down the money which

is in my hand to the lender," or one came to the borrower and said to him, "So and so, the lender appoint me as agent to bring to him this money," and the borrower believed him and delivered the money to the agent, and the agent claimed that he lost the money by accident, or he delivered the money to the lender, and the lender claimed that he did not appoint the agent and did not receive the money from him, the agent must swear that he did deliver the money to the lender, and the lender must swear, holding a holy thing in his hand, and he did not receive it, then he is entitled to collect his debt from the borrower, because the agent's testimony cannot be taken into consideration as he is interested in the case, and because he must receive an oath, and even the borrower will release the agent from the oath that shall he not be interested in the case, and he be able to act as witness, that cannot be helped. If, however, when he delivers the money to the agent he makes a condition with the borrower shall he be believed without an oath, it is an opinion that he can act as witness.

14. If the agent is not bound to receive an oath, for example, that the borrower went with the agent and the borrower was standing at one side and saw that the agent fulfilled his message, and delivered the money to the lender, then he can act as witness against

the lender to make him bound on a thora oath. If it was two agents and the borrower went with them and saw that they fulfilled their messages, they can act as witnesses and the borrower is free without an oath.

15. The above rules hold good when the lender and the agent are present and they contradict each other. If, however, the agent came alone and stated that he delivered the money to the lender, the borrower cannot give an oath to the agent that he fulfilled his message, because nobody claimed it, and it is sure that he fulfilled his message, and the same rule applies if the agent died or went across the sea, and the lender demanded of the borrower the debt and the borrower claimed that he paid to the agent the lender cannot be bound on an oath because the borrower cannot claim positively that the agent paid him, but the borrower can put a ban on the lender if he received money and demands it again, and afterward he must pay the debt.

16. R said to B the 100 zus that you owe me, give it to C, who lives in your city, because I owe him this amount, and B claimed that he gave C the 100 zus, and C claims that he never received it, the same rule applies as in Chapter 125.

17. R came with a message from B to collect from A 50 zus, that he owes him and he collected it,

and B claims that he appointed him only to collect 20 zus, and he only brought him 20 zus, and R claims that he sent him for 50 zus and that he delivered to him the same. B must received an oath holding a holy thing in his hand that he only sent him for 20 zus and received only 20 zus, and A must pay the 30 zus to B and R, the agent, must take an oath (hises) in the presence of A that he delivered all the 50 zus to B.

## CHAPTER CXXII.

### הלוות הרשאה

### A POWER OF ATTORNEY.

1. Although if the borrower sends the debt to the lender through his authorized agent and the same was lost on the way, the borrower is free; according to the law of the preceding chapter if the borrower wishes he has the right to refuse the agent, even if he was authorized in the presence of witnesses, until he will bring a power of attorney from the lender, because perhaps the lender will die before the agent will hand the money to the lender, and if any accident will happen on the way to the lender, he will be bound to pay to the heirs, because he give him after the lender died, therefore the best advice for the borrower is he shall not give to the agent except when he has a power of attorney of the lender (Tur).

2. If the lender appoints an agent in the presence of witness to bring to him his debt from the borrower and the lender discharge the agent before the agent receives the money from the borrower, and the borrower not know about the discharging, and he delivered the money to the agent, and the money on the way to the lender got lost, the borrower is free. It is an opinion stated that the borrower is bound to pay except when the agent has a power of attorney.

3. If the lender give a power of attorney to one agent and afterwards he wishes to discharge him and to give it to another agent he is permitted and he has the right to authorize the one that comes first to get it first. The borrower cannot say to the receiver of the power of attorney perhaps the lender discharged you and he authorized another agent, because the agent can say to him, Give to me the money, and here is my power of attorney, which you may keep as a receipt, and if he discharges me he loses himself and you are free because you give me the money with the permit of the lender (Tur).

4. And if the agent was trying the case with the borrower in the court and the lender finally loses the case, he cannot claim that he discharged the agent at the same time, and the decision must stand.

5. If R authorized B to bring his article from the others he must make a form of agreement that he

authorized him and must write in the note of the power of attorney that you have the right to try the case and win and receive the money claimed, for yourself. If, however, he does not write so, and if the possessor wishes, he can refuse the agent, because he can say, "You are not my plaintiff" (B. K. 70).

6. If it is not written in that form and the possessor gave the article to the agent, and the same was lost, he is free, because any way he has the same right as the agent appointed by witnesses (Tur).

7. If the plaintiff writes in the power of attorney, you try the case and when you win, you are entitled to take a half, or a third, or a quarter of the amount claimed, and the balance will belong to me, because he is interested to try the case for his share, he can try the case for the whole amount (L. c.).

8. It is an opinion that if the plaintiff writes in the power of attorney that you try the case, and when you win, 100 Denarim will belong to you for your services, and the balance to me; he is not entitled to try the case for not more than the 100 Denarim (Tur).

9. The agent of the power of attorney is entitled to collect all the expenses incurred on said claim from the plaintiff (L. c.).

10. If a husband is desirous to bring legal ac-

tion against a person, involving the property of his wife, if he needs a power of attorney, or not. See Jewish Code, Part 4, Page 431.

11. Brothers or partners who have not yet dissolved and are desirous to bring the action against another, the party that brings the action does not need a power of attorney from the other brothers or partners, and can claim for the whole amount, because he is interested on account of his share. And if the case was tried and was lost the other partners cannot claim if I was present in the court I will plead other claims and I will win, because the present partner can say, why did you not come to claim? Therefore, if the other partner was in another city he can demand that the trial must be re-tried, because he can say, "I did not admit in the pleadings that my partner pleaded, and therefore the defendant can say to the one present partner, "Try the case, either for your share alone, or else bring a power of attorney from the others, because perhaps to-morrow the others will come and will claim again from me (Kesuboth 94).

## CHAPTER CXXIII.

1. According to the Rabinical Law a power of attorney cannot be written only on a claim that is

for a bailment in the hands of others, when he does not deny it. If it was a bailment by cash money, it must be confirmed to the agent through a piece of real property (B. K. 70).

2. On a claim of real property, even the defendant denies it a power of attorney can be written, and the same a loan with a note, even the borrower denied it, because like the lender can confirm the note and his obligation with a writing and delivering to a buyer, the same is permitted to write a power of attorney and deliver it to the agent for collection, and the lender must write to the agent confirming to you the note and all his obligations (L. c.).

3. On a noral debt, no power of attorney can be written, but the goenim make an enactment because one shall not take money from another and then go to another country so that the money shall not be collected from him, even on an oral debt, when the borrower did not deny it, or when there is witnesses for the debt, a power of attorney shall be written, but on an oral debt, when the borrower denies it, no power of attorney can be written.

4. Another opinion stated, that a power of attorney can be written on everything, either for a bailment, or robbery, or a loan with a note, or an oral debt, and even when it is denied, by the borrower; and so it is the right custom (Rambam).

5. If one has a claim on another that he was found bound to receive an oath for his claim, the plaintiff cannot write a power of attorney to an agent; he shall make the defendant swear, because no power of attorney can be delivered; only on such things that can be confirmed to the other (Rambam).

6. If the plaintiff gave a power of attorney to one agent, and afterward he gave a power of attorney to a second agent, and the two come together with the power of attorney to the defendant, the defendant must attend the second agent, because it is understood that the plaintiff discharged the first one, except when it is written in the power of attorney of the second agent that who will come first shall receive the money (Tur).

7. The receiver of the power of attorney is forbidden to write a power of attorney to another agent, because the plaintiff can say, I do not want my bailment to be in the hands of another. If, however, the agent makes a condition with the plaintiff shall he be permitted to give a power of attorney to another, he can act according to his condition (Rief).

8. The receiver of the power of attorney, if he releases the defendant from the debt, or has sold the article, or released him from the oath, or arbitrated with the defendant, it is not effective, because the plaintiff can say I appointed you for the welfare of

myself not to do injustice to me. If, however, by the appointment was stipulated either for the welfare of the claim, or even to do them injustice, then even the whole debt was released and it is effective (Rambam).

9. If two lenders have two debts of one borrower, and one wrote a power of attorney to the other, you shall act in my debt as you will act in yours, and the receiver of the power of attorney released the defendant his debt, and the debt of the other, he is bound to pay to the other in cash money for his debt, because it is understood that he did not permit him to release the whole debt, only he permitted him to arbitrate (Rasbo).

10. R came with a power of attorney from B and claimed a loan from C, and C denied it, and he said if B will receive an oath, that I owe him the money, I will pay, the court must collect the money by C, and the money must lay in the hands of the court, until B will come and receive an oath, and R, the agent, can put a ban on the one that pleads falsely to attach the money, not to pay, and a time must be granted that B shall come and receive the oath, and if he fails to come at said time, the money must be returned to the defendant (Rambam).

11. If C is found bound on an oath, he cannot refuse and say, I will not swear until I will give a

ban in the presence of B on whom he claimed on me falsely, because the ban is only an enactment of the last goenim, the parties shall testify the truth, and the oath cannot be refused on account of said enactment (Tur).

12. The receiver of the power of attorney, when he is hired for a certain amount, even he will not collect the money from the defendant, he must receive this amount. Then even the relatives of the agent, they are eligible to act as witnesses or judges to this action, because it is no difference to him whether he wins or loses. And, therefore, even the agent himself can act as witness. If, however, the receiver of the power of attorney was hired with a condition that if he wins he will have a share in the said claim and if he loses he will lose his share, then his relatives are ineligible to act as witnesses or as judges in the case, and, therefore, if the plaintiff has witnesses on his claim, he shall not give a power of attorney to one of the witnesses except when he promises him a certain sum, even if he loses the trial (Tur).

13. And the same rule applies if the defendant has witnesses that he paid the claim and the receiver of the power of attorney has a share in the collection and he is a relative to the witness, he shall not go to the trial with the receiver of the power of attorney.

ney, because he can make his witness ineligible in this claim (B. Y.).

14. The power of attorney can be authorized either to a man or a woman, even to his own wife can be authorized to collect these debts, and the defendant cannot say, you are not my plaintiff, because he has the right to give her a gift and shall not use the fruit (Tur., Gitin 52).

15. If the lender and the borrower reside in one city, it is unjust to accept the appointment of a power of attorney for collection, because it can be collected by the plaintiff himself. If, however, the defendant and the plaintiff are in different cities, it is a command to accept the appointment of a power of attorney (Schvuas 31).

#### CHAPTER CXXIV.

The defendant cannot appoint an agent with a power of attorney, he shall appear in the court and answer the claim of the plaintiff and he shall sit in his house, but if the claim is made on a prominent woman, that it is dishonorable for her to appear in the court, then the court must send the attendants of the court, and she can testify before them, and the same rule applies when a claim is made on a

great, educated man, and the plaintiff is an ignorant person, and it is dishonorable for him to appear in court with such plaintiff, the attendants must be sent and he can testify before them (Jerusalmi, Tur).

### CHAPTER CXXV.

1. R owes 100 zus to B, and said to C, Carry down the 100 zus to B, and he received the money, and afterward R wishes to withdraw, and the money shall be returned to him, and C refuses to give it. C is in the right, because in the time he received the money, it is just the same as if B had received it himself, therefore, even if the borrower died, or the lender died, the money must be given to the heirs of B. If the money was lost on the way to B, the responsibility falls on R, until the money comes into the hands of B. If C returned the money to R and R became poor afterward, and is unable to pay the debt, C is bound to pay the money to B, because it was negligent in returning the money to R. If, however, the return was on account of force or duress which R made on him, he is free (Tur).

2. An opinion stated that if C returned the money to R they two are responsible for the 100 zus, until the money will come into the possession of B, and B can collect from whichever he wishes (Rambam).

3. If the agent said to the lender, here is your money that the borrower so and so sent to you for your debt, but I want to keep same for the debt that you owe to me, if the lender admitted to the agent, that he owes him, and he has no other fortune from which to collect the debt, and the time of payment matured, then the lender cannot claim from the borrower and say, Why did you send the money through this agent, which I could not take away from him, because the borrower can say, if the money was in my hands, the court can attach anyway by me the money for your debt (see Chap. 86), because you did not have any other fortune. If, however, the lender had other fortune from which to collect the debt, then the borrower can force the agent to give the money to the lender, because as long as he did not give the money to the lender he is not free from the debt, but afterward the agent can collect the same money from the lender, and although if the lender has not admitted the debt to the agent, even if he has no other fortune from which to collect, the agent must give the money to the lender (Tur).

4. If the borrower dies and does not leave other fortune from which to collect, and even the agent receives the money from the borrower, in the presence of a witness, he is believed with his plea on account of migy, because he can say, that I paid it to the lender, and he can be believed with an oath (hises),

therefore, he is believed just now with an oath (hises) when he says he kept the money for his debt that the lender owes him, because there is no plaintiff or the heirs which can claim for them (L. c.).

5. An opinion stated even in this event the agent cannot attach the money for his debt, which the lender owed him (*Ramho*).

6. The above rules hold good only by the receiving of a loan or storage. If, however, one said to an agent, carry down this money as a gift to so and so, and the agent received the money in his hand, afterward the giver of the gift wished to withdraw and demanded the money returned from the agent, the money can be returned to the giver of the gift, if it is before the money came into the hands of the receiver of the gift, but if the receiver of the gift was a poor man who did not possess any more than 200 zus, the promise is like a vow and it cannot be withdrawn (*Gitin* 32. *Tur*).

7. If A says give 100 zus to B as a gift, it is two opinions, one stated that A can withdraw before the 100 zus was given to B, and one stated that A cannot withdraw even before it came into the possession of B (L. c.).

8. R said to B, Carry down 100 zus for C, and B went to give it to him, and found C had died. If

R was in a sound, healthy condition at the time when he authorized to give the 100 zus, and R died before C, the 100 zus must be given to the heirs of C, because it is a command to obey the commands of the deceased. If C, the receiver, died before the giver and even afterward the giver died, also, the money must be returned to the heirs of the giver (Gitin 14).

9. If the giver was on his deathbed and at the time he gave the 100 zus to the agent, if the receiver was dead, at the time he gave the money, the money must be returned to the heirs of the giver. If, however, the receiver was alive at the time when the 100 zus was given to the agent, even if he died afterward, this money must be given to the heirs of the receiver, even if the receiver died during the life of the giver, and even the heirs of the receiver were born after the death of the giver, because the words of a dying man is like written in a note and delivered (Tur).

10. The giver as long as he did not recover he cannot withdraw from the gift, if he recovers he can withdraw it even after the gift was come into the hands of the receiver (L. c.).

11. The agent so long as he did not know that the giver recovered, he must fulfill his message, and must give the money to the receiver, and if the giver will die the money belongs to the receiver, and if he recovers the money will be returned to the giver (Tur).

## CHAPTER CXXVI.

1. R had 100 zus by B, either as a loan or storage, and said to B, in the presence of the three men, the 100 zus, that I have in your hand, give it to C, either for a gift, or in payment for a debt, C is entitled to the 100 zus, and not R or B can withdraw it, even in the same time the transaction has not been completed, and R cannot release B, and even C was born after the loan was made, C is entitled to the 100 zus (Gitin 13).

2. The above rule holds good when R had 100 zus in the hand of B. If, however, R did not have 100 zus in the hand of B only he said to B give 100 zus for me to C as a loan and I will pay you, C is not entitled to the 100 zus, and each one can withdraw it and even B paid a part of the amount he can withdraw from the other part, but the amount paid to C he can collect from R because he gave it on account of his command.

3. If R said to B in the presence of the three, R, B and C, Give 100 zus to C and did not say "the 100 zus that I have in your hands, give it to C," and B admitted that R had 100 zus in his hand only he claimed because R did not specify the 100 zus, that I have in your hand, his idea was not on the 100 zus,

that he had in my hands, only he meant that he wishes that I shall give a loan to him of 100 zus, the claim of B is not effective, and it is considered in the Law that in R's mind was of the 100 zus that he had in his hand, and therefore C is entitled to the 100 zus. Another opinion stated that C is not entitled to the 100 zus.

4. R had in storage by B one ton of wheat, and R command to B in the presence of the three "Give C 50 zus, because I have a ton of wheat in your storage," and B was satisfied, and after B wished to withdraw. If the wheat was by B as storage, and R stipulated give the 50 zus money to C from the wheat, C is not entitled to the 50 zus, because B can say I am not bound to sell the wheat of R's and pay his debts, and even if C says give me the value of 50 zus in wheat, B can say, R did not command me to give you wheat, only cash, and it is not my duty to sell the wheat and give you cash (L. c.).

5. If, however, R commanded give him the 50 zus from the wheat which I have in your hand, it is as though he said, give the value of 50 zus wheat, and, therefore, C is entitled to receive for 50 zus wheat (L. c.).

6. If the wheat was a loan from R to B, and even R commanded give 50 zus in cash, C is entitled

to it, and B must give him cash or wheat the value of 50 zus at the market price (L. c.).

7. If R said to B, the 100 zus I have in your hand, give it to C in the presence of the three, and B said, I will give it when I want, and when C demanded the 100 zus, B answered, I do not want to just now, B's claim is not effective, and he is bound to give in the same time when he was bound to give to R (Rasbo).

8. If the transaction of the three parties was made illegally, and the borrower claimed afterward that he paid to the lender, he is not believed.

9. The transaction of the three parties can be valid even without the consent of the borrower or the bailee, as long as the lender or the bailor commanded to give the loan or the storage to the third party, he must be given, even if it is against the will of the borrower or the bailee (Gitin 13).

9. If by the transaction when the lender commanded to give the 100 zus to C he was absent, C is not entitled to the money, and R can withdraw, either it was a big amount, gift or a small gift. But, if the borrower made a form of agreement and admitted that C had in his hands 100 zus he cannot be withdrawn from same (Gitin 14).

10. If R said to B in the presence of three par-

ties the 100 zus that I have in your hands give it to C, and B delayed to give C the payment, and therefore C wished to withdraw and collect from R, it is two judicial opinions, one stated that he cannot withdraw it, and one stated that he can withdraw as long as C did not release R and even according to the judicial opinions C cannot claim from R so long as he can collect from B (Tur).

11. If R said to B in the presence of three parties the 100 zus I have in your hands, give it to C, and afterward is found that B is poor and he is unable to pay the debt, then C can withdraw and collect from R, because R defrauded him. If, however, C knew that B was poor or at the time when the transaction took place he was reach, and he became poor afterward, he cannot withdraw (Rambam).

12. If C claimed that B was poor and R defrauded him, and R claimed that B was rich and became poor afterward, if the debt that R owed to C was with a note, the burden of proof lays with R to prove that B became poor afterward, and if he is unable to bring evidence, and it is written in the note believing then C can collect his debt without oath, and if in the note is not written believing then C must swear and he can collect his debt, if the debt was oral, R is believed with an oath (hises) of his claim that B was rich and became poor afterward (Tur).

13. R said to B, in the presence of three, that note I have in your hand, give it to C, so long as R did not withdraw, B is bound to give the note to C, but if R withdrew the note cannot be given to C. If R wrote a separate note that he confirms the note and all the obligations and authorizes B to give it to C, he cannot withdraw (Tur).

14. If after the transaction was decided shall B paid the 100 zus to C, B claimed that he looked over his reckoning and he found that he did not owe anything to R and he made a mistake in his admitting. If B can prove with witnesses that he said the truth, he is free, even the transfer was in the presence of witness, and R must pay the 100 zus to C. If B cannot prove the mistake, and the transfer to pay the 100 zus to C was in the presence of witness, and a certain day was appointed to pay the money to C, and this claim was before the time fell due, B is not believed to say that he made a mistake.

and the same he is not believed that he stated it as a joke. If the transfer to pay to C the 100 zus was not in the presence of witness, it is two judicial opinions, one stated, that he believed to say, that he made a mistake, on account of migy, because he can say, that he never was transferred to pay C the 100 zus, or he can say, that he already paid it, when it was after the date of maturity, and another opinion stated that

he is not believed to say it was a mistake, on account of migy, because he can say that he paid, because it does not often happen that a man should make such a mistake, after admitting otherwise. "Every man looks it over good before he makes such a statement" (Gitin 14).

15. If R admitted that B made a mistake in reckoning and C is uncertain if B made a mistake or not, if R authorized B to pay the 100 zus for his debt, and R had another fortune from which C can be able to collect, then R is believed to say that B made a mistake, and C can collect the money from R. If, however, R had no other fortune, from which to collect, he is not believed to say that B made a mistake (Tur).

16. If the 100 zus was given to C as a gift, R is not believed to say that B made a mistake even if R had other fortune from which to collect, and B must give the 100 zus to C and B can collect the money from R (L. c.).

17. If C admitted that B made a mistake in reckoning, and R denied that he made a mistake, B is believed without an oath, and R must receive an oath to C, if the 100 zus was for a settlement of a debt, that B did not make a mistake. If the 100 zus was given as gift to C, R is believed without an oath (Tur).

18. If the lender said to the borrower in the presence of the three parties, give to my debtor 100 zus, and he began to give, and after, he found that he made a mistake in reckoning, that he does not owe to him anything, although he is not bound to pay more, but, that amount which he gave, he cannot recover (L. c.).

19. R hired a taxation of money by the community of the city, and he was bound to pay for a certain day a certain amount, and the community was owed B 50 zus and they authorized to R in the presence of the three parties that he shall give B 50 zus from the money that he owed to the community for the hiring of the taxation. Afterward the taxation was destroyed, either with the consent of R, either on account of the community. R is bound to pay the 50 zus to B, because at the same time the community transferred the 50 zus B released the community and depended on R to receive pay (L. c.).

20. R hired an article to B for a certain amount for every day for a certain length of time, until he will need them, and R was owed 100 zus, to C, R transferred the 100 zus to C in the presence of the three parties, and B had no use for the article, only was not worth more than 50 zus, because he did not need any more. If B said to C that the 100 zus I owed to you I will give it to you without specifying

for the hiring of the article, and even he says 100 zus that I owe to R for the labor of the article I will give it to you, he is bound to give C all the 100 zus because he admitted that he is owing to R the amount. If, however, C admitted that he knows of the transaction to B was on account of the labor of the article, and he is not owed for another thing, B is not bound to pay anything, even for the labor that he used up to date, because the labor of the article can be paid at the end, when the article be returned (Tur).

21. R transferred to B the 100 zus, that he had in the hands of C in the presence of three parties, and C gave of the money a surety man, and even the surety man did not make a form of agreement, he is obligated, because he is considered like a surety man at the time the money is given. Another opinion stated that a form of agreement is necessary (Tur).

22. The law of three parties cannot be valid through on agent, for instance, if the lender sent his agent to the borrower to transfer the money to the receiver, it cannot be valid (Rochs).

23. If, however, the lender commanded to the borrower in the presence of the agent, appointed by the receiver, it is an opinion that it can be valid. If

however, he is not appointed by the receiver, but R said to B in the presence of C, the 100 zus that I have in your hands, give it to C, he shall confirm the money for X the giver can withdraw (Tur).

24. The law of the three parties cannot be valid through writing, only the giver and the receiver and borrower must be in the presence of the three (Rivochs).

25. If a wife brought in as dowry either an oral debt or debts with notes, the husband is entitled to collect them without the ceremony of the third parties (Tur).

26. There are two opinions, if an Israelite says to a heathen, the 100 zus which I have in your hand, give it to B, and because B was satisfied, if it is effective or not.

27. If a heathen say to an Israelite, the 100 zus that I have in your hand, give it to the other Israelite in the presence of the three parties, and the bailee or the borrower says I will do so, he is bound to pay and he cannot say it was promised account of duress and force.

28. If the bailee or the borrower is Israelite and the receiver is a heathen and he received a command by the ceremony of three parties to give 100 zus to him, if the Israelite the giver does not withdraw from the transaction the money can be given to the heathen.

## CHAPTER CXXVII.

1. If a husband borrows money from his wife and thereafter divorces her if he has to repay to her or not (see Jewish Code, Part IV, Chap. 86, Page 435).

## CHAPTER CXXVIII.

1. If a man voluntarily paid a debt for a borrower without his consent, and even it was a debt with a note and even it was such a debt with a pledge, and the payer took the pledge to his possession the borrower is not bound to pay to the voluntary payer, and the borrower can take away his pledge for nothing and the payer lost his money, and even the lender was pressed the borrower to pay the debt, and the man voluntarily paid it, the borrower is free, because the borrower can say when you would not pay, I will request the lender, and he will release me (Kesuboth 107).

2. An opinion stated that if the voluntary payer owes money to the borrower, he can attach it, and need not to pay to him again.

3. If a man spends money to release another man from captivity, even if there was no agreement

between them, the released man must return all the expense (Ramo).

4. If a number of men were captured on account of non-payment of tax, and they were compelled to pay for themselves and for the others not captured, the others must return the amount paid for their taxes (Ramo).

## CHAPTER CXXIX.

### הלוות ערבות

### LAW FOR SURETY.

1. If a loan was made and afterward one came and said I will be surety for same, or the lender claimed from the borrower by the court for his loan, and one came and said, Leave him, I will be surety, or one pressed the borrower in the street to pay him the loan, and one said, Leave him, I will be surety, the surety man is not bound to pay even if he stated it in the presence of the court (B. B. 176).

2. If, however, a form of agreement was made from the surety man, either the obligation was in the presence of the court, or between him and the lender, he is obligated to pay (L. c.).

3. If at the time when the loan was made, a man

said, Lend him, I will be surety, he is obligated without any form of agreement (L. c.).

4. If the court wished to collect from the borrower, and one said, Leave him, I will be surety for him, and even if it is after the loan is made, because he is honored that the court has confidence in him. Therefore, he is obligated without any form of agreement (L. c.).

5. If one gave reference for another for a credit in business and thereafter he failed to pay, he is responsible for it (Romo).

6. If on account of the command of the surety man the lender returns the note or the pledge to the borrower the surety is obligated without a form of agreement (Kinion) (Mordchoi).

7. If a surety man signed in the note with his own handwriting after the signatures of the witnesses that he is surety for the loan, and it is recognized that is his handwriting or the witness testifies that is his signature, it is two different judicial opinions. One holds that he is obligated without a form of agreement, to collect from the surety's free property, and the other stated that he cannot be obligated only with a form of an agreement, and Mamenid holds that even he signed before the signatures of the witnesses a form of agreement must be

made, because he obligated after the giving of the money (*Kesuboth*, 101; *B. B.* 176).

8. If the surety man makes a form of agreement (*kinion*) and he writes a note to the lender and states that he is the surety for the note, and afterward the borrower is unable to pay the debt, the lender must collect his money from the surety man, he has the right to collect even from the conveyed property of the surety men (*Tur*).

9. If, however, it is not written in a note the surety transaction and even if it was taken a form of agreement of the consideration of the surety and the borrower is unable to pay the debt the lender can only collect from the free property of the surety; in that event another opinion stated that he can collect from the surety's conveyed property, even if it is not written in a note, because a form of agreement was made.

10. If the surety man did not write a separate note, but he wrote the transaction of the surety in the original note, after the signature of the witnesses and the borrower is unable to pay the debt the lender can collect only from the free property of the surety.

11. If the surety was written in the note before the signature of the witness. If it is written, "I will be surety," and afterward the witness signed it, it

can be collected only from free property, because it is like a beginning, and that is not combined with the first writing, and the witnesses not signed of them.

12. If, however, it reads so and I will be surety, and afterward the witness signs it, then it can be collected even from the conveyed property of the surety, because it is combined with the first writing, and the witness signed upon it, too (B. B. 175; Tur).

13. If a loan was made with a surety man, even the surety man is obligated to pay to the lender the debt when the borrower is unable to pay it, the lender shall not claim the debt first from the surety man, but first he must claim from the borrower, and even the borrower is possessed only of third quality real property, he cannot collect from the surety, and even if it is known that the borrower has not real property, and it is known that the surety has real property, the lender cannot collect from the surety, but he must first look after the borrower; perhaps he may possess personal property from which to collect his debt (Tur).

14. If the lender looks after the borrowers' fortune, and he does not find anything, the lender must receive an oath, according to the enactment of the Goenim, that the borrower does not possess any means, before he gets permission from the court to collect from the surety man, and in his oath, must be

included that the borrower owes him the money, because perhaps the borrower and the lender make a conspiracy of the fortune of the surety man to collect from him falsely (*Tur*).

15. From the surety man cannot be collected only after thirty days from the date the court finds him liable to pay the debt, except when a condition with the lender was made to pay without delay (*L. c.*).

16. If the borrower is not in the presence he must be notified if he is on a journey, which is possible for a messenger to make the journey in thirty days' time backwards and forwards, but if it takes longer than thirty days it is not necessary to notify him (*L. c.*).

17. If the borrower resides across the sea, and it is impossible to notify him and he has here no real property from which to collect, or if the borrower is a recalcitrant and he is in contempt of court, then he can collect from the surety man, and the surety man can collect from the borrower (*Rochs*).

18. Even if the borrower possesses real property in another country, the lender can collect from the surety man, because the lender cannot spend expenses to collect more than the amount of the loan is (*Rasbo*).

19. The above rules that the lender can collect

without notifying the borrower, holds good when the loan is made in the form of a note. If, however, the loan is made oral, it never can be collected without notifying the borrower, because perhaps he may have paid it, except when the time of the payment is not maturity (Rambam).

20. If the borrower dies, the lender cannot collect from the surety man an oral debt, except when the time of maturity is not due, or the borrower admitted before he died he did not pay the debt (L. c.).

21. This above rule holds good when it was not a condition between the lender and the surety man, if it was a condition made by the lender that he shall be believed that he did not receive payment, the case must be decided according to the condition (Tur).

22. If the lender makes a condition with the surety man, that he should have the right to collect either from the borrower or from the surety man, the lender has the right to demand the debt from the surety man before he demands from the borrower, even if the borrower possesses means from which to collect (Tur).

23. It is an opinion stated that the lender cannot demand his debt first from the surety man before he demands from the borrower, except when it was specified in the condition that he will have the

right to demand his debt first of the surety man, and then the lender can demand from the surety man even if the borrower possess means (L. c.).

24. It is another kind of surety man (named Kablon), for instance, when the surety man received the money from the lender and he gives to the borrower, or he says to the lender, you give him and I will give you, and if the surety man obligates after the loan is made, he must say that what you gave to him, I will give to you, and a form of agreement must be made of this transaction, that surety man is called in the law Kablon, and the lender is entitled to collect from such surety man first, even before he demands the loan of the borrower, and even if the borrower possesses real property, except when the borrower is willing to pay the debt (B. B. 174).

25. If the lender comes to collect the debt from the surety Kablon, and the note is not in his hands, and the lender claims that he lost the note, and the borrower admitted that he did not pay and the Kablon claims perhaps that he paid and he destroyed the note, and they made a conspiracy to collect falsely from me. It is an opinion that the right is with the Kablon (Rasbo).

26. If the Kablon receives the money from the lender and gives it to the borrower, the lender has nothing to do with the borrower, only he must collect

from the Kablon, and if the Kablon is unable to pay, he can collect from the borrower (see Chapter 86; B. B. 174).

27. It is an opinion that if the borrower does not request the loan of the lender, but the surety man commands to the lender to lend the money to the borrower, even if the lender gives the money to the borrower in his hand, the lender cannot collect from the borrower, only from the surety man, because he gives the money on account of his command (Tur).

28. If a loan was made through a surety Kablon and the borrower sold all his real property to others, even the Kablon possesses real property, if the lender wishes he can collect from the borrower conveyed property, and the buyers cannot refuse the lender and says to him, "Go and collect from the unsold property of the Kablon," and the same rule applies in a case when two receive one credit in one loan in partnership, and they are responsible each for the other for the whole amount (see Chapter 77), and one sold all his fortune to another, the lender, if he wishes, can collect from the conveyed property of the partner, and the buyers cannot refuse the lender and say, "Go and collect from the unsold property of the other" (Tur).

29. The surety man and the Kablon cannot collect from the conveyed property of the borrower

until the lender shall deliver the original note and confirm the note to him according to the law of discount (see Chapter 66); then he is entitled to collect from the conveyed property of the borrower (*Tur*).

30. If the borrower promises compensation for the surety, if it was a form of agreement, he is bound to pay the promise, and if it was not a form of agreement, he is not bound to pay (*Ramo*).

## CHAPTER CXXX.

### THE SURETY MAN PAID THE LENDER.

1. The surety man or the *Kablon* paid the debt to the lender in the presence of witnesses, or the surety man or the *Kablon* receive a receipt from the lender, and they pay before they notify the borrower, and the borrower claimed that he paid already the debt and the lender is unable to recover the money. The borrower is not bound to pay to the surety man (*Tur*).

2. If, however, the surety man paid the debt to the lender after he produces evidence that he did not receive payment, the borrower is bound to pay to the surety man all the amount he paid for him, either he paid for a debt of a note or an oral debt (*Tur*).

3. The surety man cannot collect from the bor-

rower until he brings evidence or witness that he paid for him the debt, so long as he has no witnesses or evidence, he is not entitled to collect even if the original note is in his hand, because the borrower can claim that the lender lost the note and the surety man found it (Rambam).

4. If the surety man produces a receipt from the lender, he is entitled to collect from the borrower the debt (L. c.).

5. When the surety man presents a receipt from the lender, that he paid the debt, and the borrower is unable to pay to the surety man, it is two judicial different opinions; some stated that the surety man is entitled to collect from the conveyed property of the borrower, and the other stated that the surety man cannot collect only from the free property, but not from the conveyed property until the lender will deliver the original note and confirm to him according to the law of discount note (see Chapter 66; Tur).

6. If the borrower at the time when the loan is made, he writes to the surety man that I obligate myself and my fortune from now, and any time you will pay the debt, whether you are a surety to so and so, the lender, it is like I received myself the money from you, and the borrower failed to pay the debt, the surety man is entitled to collect from the con-

veyed property of the borrower, and from his heirs of age, because it is considered like a loan with a note (Tur).

7. If a surety man pay to the lender and did not ask from him the note, the borrower is not bound to pay anything to him, because he was neglected and left the note in the hands of the lender (Tur).

8. If the borrower dies and the surety man paid the debt before he notified the heirs, if it is positive that the borrower did not pay the debt before he died, for example, he admitted before he died that he did not pay the debt, or the time of the maturity is not due, the surety man is entitled to collect from the heirs the whole amount he paid (B. B. 174).

## CHAPTER CXXXI.

### IF A SURETY MAN WITHDRAW HIS PROMISES.

1. If one man has promised to be a surety for a loan, before the money was given to the borrower he can withdraw, even if he made a form of agreement, and if the lender did not take notice of the rejection of the surety, and he gave the money to the borrower, and he is unable to pay to him, he cannot claim from the surety man (Tur).

2. If A claims of B that you was surety of the

loan, or the surety say to the borrower, "You permitted me to be surety for the loan, and I pay for you," and the borrower says, "You was surety of your own accord," or you were not was any surety, or the surety man claim that he paid the debt in the presence of the borrower to the lender, and the borrower claimed that he did not pay, or the borrower claimed, "Yes, you paid; but I return to you the same amount," or the lender claimed to the surety man that he was surety for 200 zus, and the surety man says, "I was only surety for 100 zus." All the above claims must be decided in the favor of the possessor, because possession is nine points in favor of the possessor, or if a part of the claim is admitted by the defendant, he is bound to take a Thora oath; or if he denies all the claim, he must receive an oath (hises) (Tur).

3. If the surety man sees that the borrower spent his fortune and afterward he will be unable to pay the debt if the surety man has the right to inform the lender shall he collect the debt or to be released of the obligation of the surety, even if it is in the meantime of the maturity, it is two different judicial opinions (L. c.).

4. A surety man comes to the lender in the time of the maturity and notifies him, shall he collect the debt of the borrower, and if not he wishes

to be released from the obligation of the surety, and the lender not paying any attention to the notification, and he gave him an extension of time, and in the meantime the borrower's fortune was destroyed, and the borrower is unable to pay the debt, it is two different judicial opinions, if the surety is obligated for the debt or not (*Tur*).

5. If the borrower was ready to give the money to the lender for his debt, and the surety man sends after the lender, shall he come and receive the money or shall he send the note to him, and he will receive the money, and the lender, not taking care of the notification, and the money became lost, the surety man is free of his obligation (*Ramo*).

6. When the time of maturity is due, the surety man can force the lender to collect the debt, if not he must be released of the obligation of his surety, because he can say I was satisfied to be surety only until now, and not any longer (*L. c.*).

7. If the surety or the *Kablon* obligate himself as surety for a debt with a condition and it was made a form of agreement of the transaction, if it was stipulated that he obligate from the present time, it is valid; if it was not stipulated from the present time, it is two judicial opinions if it is valid or not.

8. A bought a field from B and he wrote him a

deed, and they specified that B's wife shall sign also the deed, and she was absent at the time, closing the title, and C was a surety for B, that when she will come, she should sign the deed, and when she came she refused to sign it, and A claimed from the surety man shall he sign a note of the responsibilities of the transaction of the field, and the surety says if B's wife refused to sign the deed, you can recover the money you paid, the right is with the surety man (Tur).

9. If A says to B, "Make a loan to C and I will be surety of the body of C, that at any time you wish him from me I will bring the borrower to you, and if I will not be able to bring him, for instance, if he dies, or disappears, I will be bound to pay the debt." It is two different judicial opinions, one stated that the surety man cannot be bound, because he did not state that he is surety for the money, only for the body, and the other opinion is that the surety man is bound to pay (Rambam).

10. If one was surety for an indefinite sum, for example, he says to another, as much as you will give him I will be surety for it, it is two different judicial opinions; Miamanid holds that the surety man cannot be obligated because the sum is indefinite, and the other authorities stated that the surety man can be obligated, and the custom of the law is like this last authority (Tur).

11. If R says to B that you will be surety for C and I will be surety for you, it is considered in the law like he says, loan him and I will be surety, and that is valid without a form of agreement (S. 37).

## CHAPTER CXXXII.

### IF A WOMAN OR A MINOR WAS SURETY.

1. If a married woman was surety for a loan and the borrower failed to pay the debt, the judgment must be given in the name of the woman and cannot be held valid to collect until the husband dies or the woman will be divorced, and she will collect the money mentioned in the marriage contract, and afterward the judgment can be collected from her (B. K. 87).

2. If a minor was surety of a loan and the borrower failed to pay the debt, the surety minor is not bound to pay, even after he becomes of age (L. c.).

3. If an unmarried woman was surety for a loan, and afterward she becomes married, and the borrower fails to pay the loan, and the lender claims the money of her husband, if the transaction of the surety was oral without any note, the lender cannot collect until she will become divorced or a widow, and she receives the money mentioned in the contract of

marriage, if the surety was made in the form of note the lender is entitled to collect from her dowry she brought in to the husband (B. B. 139).

4. If two men are surety for one loan of 100 zus, and the borrower failed to pay the debt, the lender is entitled to collect the whole amount of the 100 zus from the surety man he chooses, and if one is unable to pay the whole amount, he can collect the balance from the other surety man, and another opinion stated that if the two surety men are good in credit ratings for this amount of the loan, the lender must collect half of each one except when the lender was specified that he shall be entitled to collect from whichever he chooses, then he can collect from one the whole amount (B. K. 9).

5. If one of the surety men pay the whole amount to the lender and it is proved with witness or with a receipt from the lender that he pay, he is entitled to collect the half of the amount from the other surety man.

6. If one was surety for two borrowers and the amount of the loan is equal, and the lender received one payment from the surety man, the surety must notify the lender of which debt he made the payment so that it may be known from whom he collected it (Rambam).

7. If two are surety for one loan and the lender released one of the surety men, it is an opinion stated that the lender can collect the whole amount from the other surety man, and it is another opinion, stated that he is entitled to collect only a half of the other (see Chapter 77).

#### LAW OF HONORING THE PARENTS.

The Fifth Commandment—Honor thy father and mother: That thy days may be long upon the land which the Lord thy God giveth thee (Exodus 20).

You shall fear for your mother and father (Leviticus 19).

#### CHAPTER CCXL.—YORHA DAHA.

1. What is fear? It is forbidden to stand or to sit in the seat which belongs to the father at the time when he has a meeting with his members or at the time when he is at prayer in the synagogue or when he is sitting in his home, and shall not contradict or second his words and shall not call their parents by their first names either if they are alive or dead only he must be addressed, "My dear Father or Mother" (Kidushin 30).

2. If another man is called by the same name as

the father if it is a nickname it is forbidden to call the other in the presence of the father, if it is an ordinary name it is permitted to call the other by his name in the absence of the father (L. c. 32).

3. If the children were sitting in a great assembly with highly, honorable educated people, and very nicely dressed, and the parents come in and tear their clothes, and spit on them, and smite them on the head or face, the children must be silent, and have fear for the Lord who is the king of all the kingdoms and he commands them to honor their parents (L. c.).

4. What is honor? To honor is to give the parents drink, food, clothes cover them and assist them in going and coming, wait on them, and do it all cheerfully and happily and gladly. If these things are done for the parents with a sour face then the children are subject to receive great punishment (L. c.).

5. If the parents are able to bear the expense of the food and drink, etc., they must pay for same themselves, if not and the children are able to bear the expense they must pay it, but anyway the children must bear the trouble themselves for waiting on the parents.

6. If the children are unable to support their parents they are not bound to beg from door to door

to support their parents, but they are bound to honor the parents with their personal services, even if they have to hinder their work and he will be forced to beg from door to door afterwards for himself.

7. These above rules apply only when the children have enough support for the day. If, however, they have not enough support for the day they are not bound to give their time for the service for the parents (L. c. 32).

8a. If the children are all rich the expenses of treating the parents must be borne by each of them according to the amount of their wealth. If part of them are rich and part is poor the expenses of the treatment of the parents must be borne by the ones that are rich, but the personal services must be shared by all the children (Ramo).

8. If a son needs a favor from the members of his city and he can receive the favor either account of his own respect or the respect of his father, he shall not request it account of the respect of himself but he shall request it on account of the respect of the father.

9. It is the duty of the children to stand up when the parents come into their presence (Kidushian 33).

10. If the son is the teacher of the father each

one must stand up for the other, in other words both must stand up (L. c.).

11. Even if the parents throw a pocket of gold denarim in the river the children shall not slander them nor cause them pain, nor feel incensed against them, only they must be silent. It is an opinion if the money was of the fortune of the son the son can forbid the father to throw it away. If, however, it is destroyed it is forbidden to slander the parents, but the son has the right to claim for the debit in the court (Ramo).

12. If the father has a claim against the son and they live in different cities the son must be tried in the city of the father, but the father must pay the son the expenses of the trip (Tur). (See Jewish Code, Chap. 14.)

13. The children is bound to honor the parents even after they are dead. For example, if he quotes something in his father name, he must say so my beloved father teacher said so (L. c.).

14. If the parents become insane the children must provide for them treatment with doctors and nurses until they recover (L. c.).

15. If the son sees that the father violates a command of the Thora he shall not say Father you violate a command of the Thora, only he must say

father it is written in the Thora so and then he understands his mistake and will correct it himself (Tur).

16. If a father ask for services from the son and at the same time the son has another command to fulfill, *i. e.*, if the son has to attend a burial at the same time, if the other command can be done through others the son is bound to attend to his parents. If the other command cannot be done through others then the son must attend to the other command first and after he will attend to the services of the father (Kidushin 32).

17. The command of learning the Thora has the preference of the services of the parents (Megilo 16).

18. If the parents both of them ask the children for services at one time, *i. e.*, the father and mother ask for a drink at one time, the preference belongs to the father for the services because the son and mother both must obey the father. If, however, the mother is divorced from the father the children may give the preference of service, to either one they desire (Kidushin 31).

19. If the father commands the son to violate a law of the Thora either a fulfilled or a forbidden command, even a Rabinical command, the father must not be obeyed (B. M. 32).

20. If the father commands his son that he shall not talk to or forgive R until a certain length of time and the son would like to forgive R immediately when the father has no against the son need not to obey the father (Tur).

21. Either a son or a daughter is equally bound to honor the parents and fearing for them, but a daughter when she is married she is not able to attend the services of her parents because she must attend her family, but if she become divorced she must take care of the services of the parents the same as the son (Kidushin 30).

22. It is the duty of the parents not to trouble their children too much and to pardon if they neglect to honor them, and shall not bring them to sins, because parents can release their honors (L. c. 90).

23. If a father smite his grown son after 22 years of age the father can be excommunicated by the Court because he violates the law not to lay a stone in front of a blind man (M. K. 17).

24. It is the duty of a man to honor the wife of his father even though she is not his mother to honor the husband of his mother even though he is not his father, so long as the mother or the father lives, but after they die he is not bound to honor his step-parents, but as respect he is bound to honor them even after his parents are dead (Kesuboth 103).

25. A man is bound to honor his oldest brother either if he is a brother from one father or one mother, and even if the youngest one is more educated than the oldest one (Tur).

26. A man is bound to honor his father-in-law or mother-in-law. If a man is bound to give honor to his father's father it is two opinions (Machos 12).

27. If the father desires to serve the son the son is permitted to receive the services, except if the father is a learned man then it is not permitted.

28. If a student wishes to go to another place to study because it is a better opportunity and his father forbids him account of the dangers in the city, the son need not obey the father.

29. If the parents are against their children's marriage to a certain party, the right is with the children, provided the marriage is not against religion (Ramo).

Holy Scripture says: "He that smiteth his father or his mother, shall surely be put to death (Exodus 21).

"He that curseth his father, or his mother, shall surely be put to death" (Exodus 21).

## CHAPTER CCXLI.

1. It is forbidden to children to curse the parents even after they die (Sanhedrin 53).
2. It is forbidden to smite the parents when they live and if they violate this law and wound them until they shed their blood they are subject to execution (L. c. 85).
3. If a man smites his father on his ear and makes him deaf the son is liable to execution, because it is impossible to become deaf without shedding a drop of blood from the ears, and for this reason he becomes deaf (B. K. 87).
4. If a father gets a splinter in his hand the son is forbidden to take it out if there is anyone else nearby to do so, because perhaps he will make a wound (L. c.).
5. If the son is a doctor and the father needs an operation the son is forbidden to perform it even if he does it for the welfare of his father. If, however, there is no other doctor to do this and the father is suffering by great pain the son is permitted to do whatever the father permits (Tur).
6. If a man slanders his parents, even with words, or actions the son will receive curses from the Lord and the Court has the right to punish the son with flagellations according to his deserts (L. c.).

## CHAPTER CCXLII.

THE LAW OF HONORING THE TEACHERS AND LEARNED  
MEN.

1. It is the duty of a man to honor and fear his teacher. Honor to the teacher comes before honor to the parents, when the parents are ignorant, because the parents support the children in the body for this world and the teacher supports them in the mind and prepares them for the future world (B. M. 33).

2. He who strives with his teacher is like one striving with the Lord and he who complains of his teacher is like one complaining of the Lord (Sanhedrin 110). If the father is the teacher of the son it is the custom that the son may call by the name father, because the father has the right to release him the honor from saying, "My dear teacher" (Schach).

3. It is forbidden for a scholar to answer questions of law in the presence of his teacher without the teacher's permission, and who violates the law he is liable to punishment.

4. It is forbidden to call the teacher by the first name even after his death. He must only be addressed "My dear teacher."

5. It is forbidden to sit on a teacher's seat.
6. If a teacher dies the scholar is bound to tear his coat like he is bound to tear his coat when his father dies.
7. If the father and the teacher lose anything, and it is impossible to look for both of them at once, the preference belongs to the teacher.
8. If the father and the teacher carry a heavy load, and need some assistance, and it is impossible to help them both at once, the preference of assistance belongs to the teacher.
9. If the teacher and the father are in captivity or detention the preference of helping to release than is given to the teacher.
10. The above rules of preference of the teacher hold good only when the scholar has received the majority of his education from said teacher; if, however, he has not received so much learning from the teacher without pay, or the father pay to the teacher, then the preference belongs to the father.
11. If the scholar and the teacher lose each one an article and it is impossible to look for both at the same time, then the preference belongs to the scholar.
12. The teacher is bound to honor the scholar also like the scholar is bound to honor him.

13. It is the duty of the scholar to stand up when he sees the teacher as far as his eye can see him.

### CHAPTER CCXLIII.

The judges thou shalt not revile; and a ruler among thy people thou shalt not curse (Exodus 23).

1. It is the duty of the people to honor and to fear for the ruler and for the judges and for all the learned men.

2. It is the duty of the judges and the learned men to keep itself honorably not to slander each other, not to eat, or do manual labor in the presence of the people (B. B. 8).

3. Clergymen are free from all kinds of taxation (Nedorim 62).

4. It is the duty of the people to provide funds to support the judges and the learned men, that they may have enough to live in a good manner (Ramo 246).

5. It is a big sin to slander and to hate learned men. He who does so has no part in the world to come (Sanhedrin 99).

6. It is forbidden to ask a service of a learned man (Ramo).

7. The court has the authority to punish the man who slanders a learned man (Ramo).
8. The learned man has a right to excuse the slanderer (Megilo 28).

#### CHAPTER CCXLIV.

Before the hoary head shalt thou rise up, and honor the face of the old man; and thou shalt be afraid of thy God: I am the Lord (Leviticus 20).

1. It is a command to stand up when a learned man comes into his presence even if he is not an old man, and to stand up in the presence of an old man, seventy years of age, even if he is not learned, providing he is near, less than four yards to him (Kidushin 32). It is forbidden to close the eyes and make believe you don't see him (L. c. 33).

2. A working man, when he is on his duty, is not bound to stand up in the presence of a learned man, because his work must not be hindered (L. c.).

3. It is the duty of the learned man to go in a different way if he can, to avoid troubling the people to stand up for him (L. c.).

## CHAPTER CCXLV.

1. It is the duty of every man to teach his son and his grandchildren the learning of the Thora and if the father did not teach them, the children are bound to obtain learning themselves (Kidushin 29).
2. If the father and the son desire to learn and the father cannot afford the expenditure for both, the father comes first; however, if the son is clever in learning, that he can make quicker progress then the son comes first (L. c.).
3. The members of each city can compel each other to cover the expenses of a school for children (Jewish Code, Chap. 163).
4. A teacher is supposed not to teach not more than 25 children, and if there are more than 25 until 40, he must have an assistant, if it is until 50 they need 2 teachers (B. B. 21).
5. The teacher is not allowed to whip his scholars with a rod or with a stick, only with a little strap (L. c.).
6. Each neighborhood must have a school so that the child will not have to go a great distance to reach the school, and shall not have to pass bridges, rivers, or dangerous places (L. c.).
7. If a teacher leaves his scholars alone during

school hours and goes out to look for other business, or if he neglects the children and is lazy in the teaching, he is cursed by the Lord and can be discharged without notification (Rambam).

8. It is forbidden for the teacher to be up at night, and attend the school in the day time, or to fast in the time of teaching, or to overeat, because these things impair his health and results in neglect in the teaching of the children.

## CHAPTER CCXLVI.

1. It is a command for every man, either rich or poor, or healthy or sick, young or old, even a beggar who goes from door to door, who has a wife and children, to support, to devote a time in the day for studying the Thora. If he has no time for studying the Thora on account of his amount of business, he must support the poor students, and when they learn through his assistance, it is the same as if he learned himself.

2. A man can make a verbal agreement with a poor student to support him and he shall share with him the righteous, but cannot share in the future learn what he has already learned in the past (Ramo).

3. The scholar should not be ashamed to ask

the teacher what is doubtful to him even one hundred times, until he finds out the truth of his learning. The wise ask everything they do not understand, the fools are ashamed to ask (Erivin 54).

4. A man must study the Thora until he dies and if he stops studying he surely will forget what he has already learned, because the Thora is estimated as gold and glass, that is, hard to obtain possession of it as it is hard to get gold; and it is easy to forget it, as it is to break glass (Chgigo 15).

5. If the teacher does not conduct himself properly, even if he has a good education, he shall not be appointed as teacher.

6. If the teacher goes over the lesson and the scholar does not understand, the teacher shall not be angry with him, but shall continue going over the lesson, even a hundred times, until the scholar does understand, and if the teacher feels angry with the scholar the scholar must ask the teacher to excuse him, and tell him he is learning and desires to learn, but that his mind is not smart enough to learn all at one time.

7. If a woman learns the Thora even if she is not commanded to, she fulfills a command, and she is bound to learn the law of the three commands which belong to her, and if she helps the husband

with the attention to the children, bringing them up well and educating them, she will receive a great compensation in the world to come.

8. A man should study before he marries, because after marriage family burdens would prevent him from studying (Kidushin 30).

9. If a man has another command to attend to, and he need to study the Thora, the Thora studying has the preference provided when the other commandment can be attended by others (L. c. 40).

10. If a man violates the command to study the Thora on account of the burden of his riches, as punishment he afterwards becomes poor and he will be forced to violate the command of studying the Thora for the reason that he is poor (Ovous, p. 9).

11. It is forbidden to learn the Thora in an unclean place, as for example, in a bath house, lavatory, etc. (Ramo).

12. It is commanded to make a celebration or party after finishing a part of the Thora (Ramo).

## CHAPTER CCXLVII.

### LAW OF CHARITY.

1. If there be among thee a needy man, any one of thy brethren within any of thy gates in thy land

which the Lord thy God giveth thee, thou shalt not harden thy heart, nor shut thy hand from thy needy brother.

But thou shalt open wide thy hand unto him, and thou shalt surely lend him sufficient for his need, which his wishing want requireth.

Thou shalt surely give him, and thy heart shall not be grieved when thou givest unto him; for because of this thing the Lord thy God will bless thee in all thy work, and in all the acquisition of thy hand.

For the needy will not cease out of the land; therefore do I command thee, saying, Thou shalt open wide thy hand unto thy brother, to thy poor, and to thy needy, in thy land (Deut. 15).

### CHAPTER CCXLVIII.

1. It is a command to give charity according to a man's means and it is forbidden to refuse the poor because it may lead to the shedding of the blood of the poor man, because he may die of hunger.

2. A man cannot become poor from giving charity and can be saved from risk or dangers and death like it is written in the 17th Chapter of 1 Kings:

“And the word of the Lord came unto him, saying, Arise, go unto Zerephath, which belongeth to Zidon, and remain there; behold, I have ordained there a widow-woman to sustain thee. He arose, and went to Zerephath; and when he came to the gate of the city, behold, there was a widow-woman gathering sticks of wood; and he called her, and said, Fetch me, I pray thee, a little water in a vessel, that I may drink. And as she went to fetch it, he called to her, and said, Bring me, I pray thee, a morsel of bread in thy hand. And she said, As the Lord thy God liveth, I have nothing baked, but a handful of meal in a jar, and a little oil in a cruise, and behold, I am gathering a couple of sticks, that I may go in and prepare it for me and my son, and when we have eaten it, we shall have to die. And Elijah said unto her, Fear not; go and do as thou has said; but make me thereof a little cake at first, and bring it out unto me, and for thee and for thy son shalt thou prepare (something) afterward. For thus hath said the Lord the God Israel, The jar of meal shall not fail, neither shall the cruise of oil diminish, until the day the Lord giveth rain upon the face of the earth, And she went and did according to the word of Elijah, and she, and he and her husband, did eat (many) days. The jar of meal failed not, nor did the cruise of oil diminish, according to the word of the Lord, which he had spoken through means of Elijah. And

it came to pass after those events, that the son of the woman, the mistress of the house, fell sick; and his sickness became very severe, until that at length there was no breath left in him. And she said unto Elijah, What have I to do with thee, O man of God, thou art come unto me to call my sin to remembrance, and to slay my son, and he said unto her, Give me thy son. And he took him out of her bosom, and carried him up into the upper chamber, in which he abode, and he laid him upon his own bed. And he called unto the Lord, and said, O Lord my God, hast thou also brought evil upon the widow with whom I sojourn, by slaying her son? And he stretched himself out over the child, three times, and called upon the Lord, and said, O Lord, my God; let, I pray thee, the soul of this child return again within him. And the Lord listened to the voice of Elijah, and the soul of the child returned unto him, and he revived. And Elijah took the child and brought him down out of the upper chamber into the house, and gave him unto his mother, and Elijah said, See, thy son liveth. And the woman said to Elijah, Now by this I do I know, that thou art a man of God, and the word of the Lord in thy mouth is truth."

3. If a man feels pity for the poor the Lord will feel pity for him and he must think that being poor is like a wheel, it turns over and sometimes it is himself can be happened; therefore, if he feels pity for

the poor the Lord will save him from all dangers and risks, and even save him from sickness and death (Schabos 153).

4. There are eight steps in the command of giving charity. Each one is higher for the other.

a. When a man is in financial straits, it is a command to help him with a loan, with a present, or to find him labor, so he will be saved from beggary; that is the first (Schabos 63).

b. When a man gives charity and he doesn't know to whom he is giving it; for instance, when he gives to a charity organization (B. B. 10).

c. When a man gives charity and he knows to whom he is giving it, but the poor man doesn't know where it comes from, for instance, like one learned man put money under the door of a poor man and in the morning when the poor man opens the doors he finds it, so that the poor man would not feel ashamed of himself. This way is very good in case the man knows that the leaders of the charity are not so trustworthy (Kesuboth 67).

d. The poor man knows of whom he is taking, but the giver doesn't know to whom he is giving. For instance, a learned man put money in his back pocket and went among the poor, so

the poor could take the money from his pocket and need not feel ashamed of himself (L. c.).

e. To give to a poor man before he asks for it (B. B. 10).

f. If the poor man requests it, give it.

g. To give the poor man less than he asks for, but with a happy face.

h. To give to the poor man, but with a sour face.

5. It is forbidden to praise and announce oneself when giving charity. If he does so, he will not receive good returns from the Lord for this, but will receive great punishment for them.

6. It is permitted when a man presents an article to a synagogue to put his name in it that he donated it to the synagogue (Ramo).

7. It is a great command to influence others to give charity by going around among people and collecting for charity (B. B. 9).

8. If a man turns his back on a poor man and refuses to give him, he is called a bad man and sometimes he can bring the poor man to death. Like the following case: Nathan Gamzu was walking on a road with three asses heavily loaded, one with food, one with drink, and the other with spices. A poor

man met him and he said, "Feed me." Nathan Gamzu answered, "Wait until I unload my asses." Before he finished unloading them, the poor man died from starvation. Nathan Gamzu fell upon the body and said, "My eyes which did not feel pity of your eyes should become blind, and my hand, which did not feel pity of your hands, should be taken off, and my feet, which didn't feel pity of your feet, should become crooked and my whole body should become blistered." And all this punishment happened to him because he refused the poor man and he was satisfied with this punishment which he receives in this world, so that he becomes forgiven for this sin in the other world (Tanis 21).

9. A learned man divorced his wife and she married another one and her husband became blind afterward and he was unable to support himself. The learned man, her first husband, rented rooms for them and supported them (Midow's, Genesis 17).

10. A man never gets poor by giving charity, the more he gives the richer he gets because if he feels pity for the poor the Lord will have pity on him and he will be supplied with long life, health and riches.

11. If a man is taxed a certain amount for charity, and he refuses to pay, the court and the leaders

of the charity have the right to compel him and take some of his property as a pledge, for it (B. B. 7).

12. It is forbidden to put a tax on orphans for charity, except when it is for the welfare of the orphans (L. c.).

13. It is forbidden to receive a large amount of charity from a married woman, or from a minor who has a father, without the consent of the husband or father; because, perhaps, the father or the husband will be against this amount.

14. However, if a woman is active in her husband's business it is permitted to receive any amount of charity from her.

15. The charity leaders are forbidden to demand a man to give charity who has a good character, but who cannot afford to give it on account of support of family (Tur.)

16. If you must refuse the poor man because you cannot afford to give him charity do not slander him, but ask him to excuse you in a nice, polite manner and give him as much as you can (B. B. 9).

17. The charity leaders are permitted to use the collected charity money for the purpose of assisting poor girls for marrying expenditures (Tur.).

## CHAPTER CCL.

1. The leaders of the charity must give the poor man enough for his needs. Even when a rich man becomes poor anything he was used to before in them, and even was used to eat a fat chicken and a bottle of good wine, charity must supply him with all kinds of food he was used to before (Kesuboth 67).
2. If the poor man is single and desires to get married and possesses no means, the charity must help him.
3. The contributions for the support of the poor men of the members of each city must be divided according to the proportion of the wealth of the inhabitants. For example, the man who has \$50,000 must pay twice as much as the man who has \$25,000.
4. A man must support himself and his family first, then if he is able he must support his parents, and if he is more able then the support of his oldest children next, and after his brothers and after the relatives, and after the neighbors, and after the poor of his own city comes before the support of the poor of an outside city; and the poor of Palestine has the preference of the poor of other countries (Tur.).
5. When a man gives a sum of money to the

charity officers he or his heirs might have no right to command to whom it shall be given (Tur.).

6. If a man and a woman both ask for assistance of the charity, either for food or for clothing, and there is not enough money in treasury for both, the woman has the preference of the receiving charity (Kesuboth 67).

7. If male and female orphans ask for assistance of the charity for the purpose of each one marrying another and there is not enough money for both, the orphan girl has the preference in receiving the assistance for the marriage expenditures (L. c.).

8. If a man asks for food he must be believed, without investigation, if it is true, but if he asks for clothing, then he must be investigated to see if he needs it.

9. If two poor men make a promise to give a certain amount for charity this promise can be fulfilled if each one gives the amount to the other.

10. If a community needs to hire a Rabbi and Cantor and the fund of the treasury is not enough for hiring both, the hiring of the Rabbi has the preference (Tur.).

11. It is forbidden for the charity officers to support the Rabbi of a city with charity money, because it is a great disgrace for him and for the city

to be supported with such money. He must be supported through a separate fund with great honor. However, it is permitted for anyone to send to him some amount of money as gift.

## CHAPTER CCLII.

1. The command to release a man from captivity has the preference over the command of support, therefore, if there are two demands for the charity leaders one to support a poor man and another for the purpose of releasing a man from captivity, and the treasury has not enough for both, the preference is given to releasing the man in captivity (B. B. 8).

2. The man who violates the command to release a man from captivity is liable to punishment by God and by mankind, and if he deny the releasing every second when it is possible it is equal to shedding the man's blood (Rambam).

3. It is forbidden to assist a prisoner to escape because the laws of the government are like the law of the Lord, and must not be violated (B. K. 113).

4. If a man and a woman both are in captivity and the charity has not enough funds to release them both, the woman has the preference because it is a shame to leave a woman in such a place (Hyreis 13).

5. If they both declare that if they are not released they will commit suicide, the preference of release is given to the man (Ramo).

5a. If the son and the mother and the father and the teacher are all in captivity the mother has the preference of all and after he must release himself and after the teacher and after the father.

6. If the man in captivity can be released of his own fortune, but he refuses and desires to be released from the charity fund, he can be released and is bound to return the expenses (Mordchoi).

7. If a son is in captivity and is unable to release himself, and the father possess means he must release his son from captivity and the same rule applies to other relatives (L. c.).

8. If a wealthy man is on a journey and becomes short of money he can obtain same from charity (Misno Peio).

9. If a rich man is a miser and does not feed himself properly the charity is not bound to assist him (Kesuboth 67).

10. If a man receives charity for support, his debtor cannot attach this money for his debt (Peio).

11. It is forbidden for a poor man to depend on charity, he must try to find manual labor and live by his own work by the sweat of his brow, and if

he does this he will become rich and will be able to give charity to others (Psochim 113).

12. A man is forbidden to make believe that he is blind, lame or deaf in order to beg, and if he does this he will become really blind as a punishment (Misno Peio).

13. If a man goes to another city for business and is taxed for charity he must pay it in the city where he is taxed, and he cannot fulfill his promise by paying the same amount in the city where he resides (Megilo 27).

14. If a poor man receives charity and afterward becomes rich he need not repay the amount to the charity (Ramo, Chap. 257).

15. If a leader of a charity claims that he made a loan of a certain amount for the use of the charity he is believed, but if the claim is made after his term of office has expired he is not believed (L. c.).

## CHAPTER CCLXX.

1. It is a command of everyone to write himself the five scrolls of law, and it is forbidden to sell them except when it is necessary for expenditures to study the Thora or to marry a wife, and when he has nothing else he can sell.

2. If a man buys the five scrolls of law and he fixes one word in them he fulfills the same command. The law applies only in the olden time when the students had learned the other learning by heart, then there was a command to write or to buy the five scrolls of law, but now when the students learning in printed books instead of by heart, it is the greatest command to buy the Bible or Misno or Talmud or the Codes in any different languages, and it is forbidden to sell them except when the money is needed for expenditures to study the Thora or marry a wife (Sanhedrin 21).

#### THE LAW FOR MURDER.

The Holy Scripture says the following:

“He that smiteth a man, so that he die, shall surely be put to death.”

“But if a man come presumptuously upon his neighbor, to slay him with guile, from my altar shalt thou take him, that he may die (Exodus 21).

“Whoever it be that killeth a person, according to the testimony of witnesses, shall the murderer be put to death; but one witness shall not testify against any person to cause him to die.

“Moreover, ye shall take no redemption money for the person of a murderer, who is guilty of death; but he shall surely be put to death (Numbers 36).

1. If a man murders another, whether he was young or old, woman or child (even one day old) or even when the mother being pregnant nine months and the child is born, and the murderer kills such a child, or even if a man kills a man who is unconscious and near death, and physicians giving up all hopes of his recovery, the person is guilty of such crime and must receive a punishment of death with a sword (*Nido 44*).
2. A murderer who is a minor under thirteen years of age cannot be punished with death, but if he is thirteen years and one day old he can be prosecuted as a murderer.
3. The judges are forbidden to accept redemption money for a murderer to free himself from death, even if the relatives of the murdered are willing to pardon him; because the body of the murdered one belongs to the Lord, and He commands that he who murders his neighbor must be killed, too (*Kesuboth 37*).
4. The murder cases must be tried before twenty-three judges (*Sanhedrin 40*).
5. If twelve judges say "Not Guilty" and eleven say "Guilty," the defendant is not guilty; if twelve say "Guilty" and eleven say "Not Guilty," or if eleven say "Guilty" and eleven "Not Guilty" and

one says he does not know, or even twenty-two say "Guilty" or "Not Guilty" and one says he does not know, then two more judges must be added (L. c.).

6. If the two added judges say "Guilty" the defendant is guilty, and if the two go on the side of "Not Guilty," then there are thirteen say "Not Guilty" and twelve "Guilty," then the defendant is found "Not Guilty." If, however, one of the added judges says "Guilty" and the other "Not Guilty" then two more judges must be added. This can go on until it reaches seventy-one judges (L. c.).

7. If thirty-six judges say "Not Guilty" and thirty-five say "Guilty" the defendant is not guilty. If thirty-six say "Guilty" and 35 say "Not Guilty" the judges must argue with each other until one will withdraw to either side, and if they cannot agree the head of the judges has the authority to declare the defendant free. If thirty-five say "Not Guilty" and thirty-five say "Guilty" and one says he does not know, the defendant is "Not Guilty" (L. c. 42).

8. If thirty-four say "Not Guilty" and thirty-six say "Guilty" and one says he does not know, he is guilty because it is two more for guilty.

9. If all the judges start to decide he is guilty, then the defendant must be declared "Not Guilty," because every such case the execution must be de-

layed over night so the judges may have time to find out if he is righteous, and because they all pronounce him guilty they will not look for anything in his favor; therefore, he must be decided as "Not Guilty," and it is shown that there is some conspiracy against him, since there is not one on his side (Sanhedrin 17).

10. When the decision that he is guilty is rendered, the convict must be present at the time, if he is absent at the same time the decision is void (B. K. 45).

11. The witnesses must state to the murderer, "If you killed the man you will be executed yourself by the sword" (Sanhedrin 8).

12. The witnesses or the public are forbidden to lynch or kill the said murderer, but he must be brought to trial to the court (Machos 12).

13. The public is sometimes permitted to lynch a murderer, when he is pursuing someone with the intent to kill, and in order to protect the pursued, a person may interfere, and if it is impossible to save the pursued in any other way, then it is permitted to kill the pursuer (Sanhedrin 72).

14. The pursuer must also be told, "If you don't stop attacking that man I will kill you (L. c.).

15. If, however, it is proven that the life of the

pursued could have been saved by catching hold of him without killing him, and the third party killed the pursued, then the third party himself is guilty of murder (*Sanhedrin* 49-74).

16. The above law applies either to a male or female.

17. If a pregnant woman cannot give birth to a child naturally, and it is impossible for the doctor to save both lives, or in order to give birth to a live child the mother must die, or in order to save the mother's life the child must be killed, it is permitted to cut the child in pieces and save the life of the mother (*L. c.*).

18. If a man sees his neighbor drowning, it is his duty to summon help, if he does not he is breaking the Commandments, which says, "You shall not stand and look when the blood of your comrade is shedding" (*L. c.* 73).

19. If a man hires another to kill a man, or if he binds the man's hands and feet to be devoured by a wild beast, he is liable by the law of Heaven, and the government has the authority to execute them both, so that there may be no repetition of such a proceeding (*Kidushin* 43).

20. If a pursuer causes damages to other men's property at the time he is running after someone to

kill him, the pursuer is not liable for damages, because he is liable to give his body to be executed; therefore, he cannot be tried to two punishments.

21. If the pursued causes damages to other people's property at the time he is being pursued, the pursued is liable to pay for the damages because it is forbidden to save his life at the expense of other men's property. If the damaged property belongs to the pursuer then the pursued is not liable, because if he is entitled to kill the pursuer's body, he can also destroy his property (B. K. 117).

22. If a third party runs after the pursuer to save the pursued and he causes damage to other men's property or to the property belonging to the pursuer, he is not liable, because it is an enactment made that each one shall be free of damages in order to save a life (B. K. 117).

23. If a ship was overloaded and she was in danger of being broken up and sinking and a man threw part of the overload into the water to save the ship, the man is not liable for damages, because the overloading is considered under the law like a pursuer (B. K. 117).

24. If ten men smite one man with ten sticks either all together or separately each one after the other, and the man dies, they cannot be prosecuted

by the law of mankind, because each one did not kill the whole body, but the government has the authority to execute the ten so there may be no repetition of this proceeding (Sanhedrin 46).

25. If one who is fatally wounded (Treifo) from which he cannot recover, if he kill another in the presence of the judges he is guilty of murder (L. c.).

26. The witnesses must be examined by cross examination, seven direct and seven indirect (See Jewish Code, Chap. 29) and the witnesses must each be examined separately and alone. If they are found correct and satisfactory the judges must take deliberation. If they decide the convict is not guilty the decision can be rendered the same day. If he is decided as guilty then the decision must be delayed for over night so as to find out whether the defendant is righteous (Sanhedrin 37).

27. After the testimony is finished the judges must make some motion in the defendant's favor telling him if he has not sinned he need not be afraid for the testimony of the witnesses (L. c.).

28. The trial of a murderer cannot be started on Friday or before a holiday because maybe he would be found guilty of killing and it is forbidden to kill a man on Saturday or holiday, and it is impossible to keep the man alive after it is decided to kill him.

29. It is forbidden to condemn a man for a murder on circumstantial evidence, the proof must be furnished by regular witnesses who saw the killing.

30. If the evidence and the testimony is found to be correct, the convict must be put in jail, and judges must be assembled and deliberate to decide the case.

31. When the decision is rendered that the convict is guilty and must be executed the court attendants take the convict out from the court to the place of execution and one man stands outside at the door with a flag in his hand, and another one some distance away on a horse, and before he leaves the court room it must be announced publicly that so and so has been found guilty and must be put to that kind of death, because he has committed such and such a crime, in such place, on such date and so and so is the witness. If somebody knows anything righteous in his favor they shall come to this court and notify it. If somebody afterward comes and says, "I know something in favor of this convict," the man lifts up his flag and the man on the horse runs after the convict and brings him back to the court room. If they find anything right in his favor he must be free and if not he is returned to the place of execution. Even if the convict himself says that he can prove his righteousness he must be returned to the court twice,

even if there is no sense in what he is saying, because his fear of being executed may prevent him from properly explaining the said righteousness. Afterward the attendants take him to the place of execution if the third time he says that he can prove his righteousness, if what he says seems sensible, he can be returned even a hundred more times; therefore, when he is being taken to the place of execution on the third time two learned men must accompany him and shall understand if his words are sensible or not. If they are sensible then he must return to the court, and if not he must go on to the place of execution (*Sanhedrin* 44).

32. When the judges decide the convict is guilty and must be executed it is forbidden to delay the execution, even if the convict is a pregnant woman, she cannot even be held until the child is born. If, however, she sit on the birth bed and the child starts to move from her they may wait until the child is born and then execute the woman (*Erichin* 7).

33. If it is certain that the convict is a murderer, but his crime cannot be proved with sufficient evidence to find him guilty of execution, or if the witness did not notify him of his coming execution, then he can be confined in a small cell and shall be given such a small portion of bread and water that he finally starves to death, to avoid further danger to the community (*L. c.* 81).

34. The bodies of executed murderers should be buried in a special burying ground not where the bodies of other people are buried (L. c.).

35. It is forbidden to execute two criminals on the same day, when they have committed different crimes; if, however, they both committed one crime they may be executed on the same day (L. c.).

36. It is the duty of the judges to do all that is possible to prevent the prisoner from being executed, and to find out all that is righteous about him. The judges must not rush a prisoner off to be executed. A judge makes a bad reputation for himself who has condemned more than one prisoner to execution in seven years (L. c.).

37. If a murderer runs away, after it is decided to execute him, to a different city and is captured, he does not need another trial, but simply a witness to testify that he is the murderer who disappeared, and he can be executed in the place where he is captured (L. c. 45).

38. If it is impossible to slay a murderer with a sword, it is permitted to kill him in any way that is possible.

39. If a murderer, after it is decided to execute him, gets away into a big crowd of criminals before the decision is rendered to execute them, and cannot

be recognized among them, then all of them must be free, because the decision to execute him must be rendered in the presence of the convict and this cannot be done when he is not recognized, even if they bring all to the court.

40. If a man has committed two kinds of crimes which one is the punishment of death is heavier than the other, he must be executed with the death for the heavier crime.

41. If a ruler comes to a city and demands a certain rebel, and if they refuse to give this rebel up, he will slay all the people in the city, then it is permitted to give up this rebel to the ruler so as to save the lives of the entire city (Jerusalmi).

42. If the ruler says give me one man without specifying any name then it is forbidden to the city to give up any man.

The Judge has the right to decide a case according to his understanding (see Code I, Chap. 12) and can use any ruse to find out the truth and it is based on the Talmud. B.B. 58. A man has ten sons and his wife admits that only one of them is legitimate. The man makes a will leaving his entire fortune to the one legitimate son. The man dies and afterward the ten sons all come before the Judge, each one claiming that he is the legitimate one and the entire fortune belongs to him. The Judge commands to each of the ten sons to go to the father's grave and knock on the headstone until the father will stand up and declare to which one the estate belongs. Nine of the sons go to the grave and knock, but one has the respect for the father and does not go. Afterward the Judge decides that the entire estate belongs to the son who did not knock on the grave. Another instance of this is in the story of King Solomon in the case of the two women, Kings 1:3. One woman said, "Pardon, my Lord, I and this woman dwell in one house and I was delivered of a child with her in the house, and it came to pass on the third day after I was delivered this woman also had a child. We were together and there was no stranger with us in the house and this woman's child died in the night because she had overlaid him. She arose in the middle of the night and took my son from beside me, while I was asleep, and laid him in her bosom and her dead son she laid in my bosom. And when I rose in the morning to give my son suck, behold he was dead, but when I looked at him carefully in the morning behold it was not my son whom I had borne."

And the other woman said, "It is not so. My son is the living one and thy son is the dead; and this one said it is not so, thy son is the dead and my son is the living." Thus they spoke before the King. Then said the King, "This one saith this is my son that liveth and thy son is dead, and the other said it is not so, thy son is the dead and my son is the living," and the King said, "Fetch me a sword," and they brought the sword before the King, and the King said, "Hew the living child in two parts and give one half to one and the other half to the other." Then spoke the woman whose son was the living unto the King, for her love had become enkindled for her son, and she said, "O pardon me, Lord, give her the living child and only do not slay it." But the other said, "Neither mine nor thine shall it be; hew it asunder." The King then answered and said, "Give her the living child and do not slay it, she is its mother."

The Midros Rabo, Solomon's Songs, says that one of these women was the mother-in-law and the other was the daughter-in-law and her husband died, and as the law says, in Code 4, page 508, Sec. 21, that when a husband dies and does not leave issue the widow is forbidden to re-marry without paying attention to the "barefoot" (Chlizo) and it is well known that the mother-in-law hates the daughter-in-law (Yavomath 117), and therefore, the mother-in-law desires that her child shall be the live one and the daughter-in-law's child shall be the dead one, and she shall be forbidden to re-marry until the minor will become of age, and he will be able to give attention to the ceremony of the "Barefooted" (Chlizo),

and the King understood from the saying of the mother-in-law because she gave the preference in her pleading that the dead child belonged to the other and the live child to her, and the right mother stated in her plea that the live child belonged to her and the dead one to the other. From this point the King understood that the daughter-in-law is the right mother and the mother-in-law is the false one, and therefore, he commanded to hew the child to prove for the world which one is in the right.

The law of Migy: When a litigant pleads before the court one plea, and he could have a better plea and he not claim the better one, therefore, he is believed with the plea. However, if witness will contradict the other plea he is not believed in that plea.

(Supplement to Page 243.)

In this connection, the Talmud relates (Sanhedrin 93), that a certain judge at a trial, when the two parties finished the testimony, he not only used for evidence witnesses or oaths, but he also smelled whether the parties were telling the truth or not; and we hope that when the appointed of the Lord will come, he will be so educated that he will be able to decide a trial at a moment's notice, possessing the power of smelling whether the parties are telling the truth (Isaiah 11-3). That means, the soul has the same faculties as the body and she needs to eat and

drink the same like the body and she feels pain and bad smellnig as the body does. The eat and drink of the soul means the learning and the fulfillment of the commandments (see Exodus 24-11) and when one of the commandments is violated then the soul is like a cripple, and if a man thinks to do some iniquity it is just as if there was a bad odor from the mouth. No one can be an expert to decide a trial with such proof, but only those that have the highest education and intellect and fear of the Lord. Therefore, the Prophet Isaiah said that the "Messiah" will be so educated that he will be able to decide cases with the power of smell, and the High Priest also had the understanding and the intelligence to decide a case with the same faculty.



## SUPPLEMENT TO CODE IV.

### CHAPTER XXXIX

1. If one betrothed a woman on condition that she shall not have made vow and afterward it is found that she made a vow, if it is from the kind that she shall not eat meat or not drink wine, no powder herself, no wear ornaments, she does not become betrothed and even a divorce is not necessary (Kesuboth 72). If it is not this kind of vow, even the husband say that he is against this vow, the betrothal take effect. If, however, he say to the woman on condition you shall no have no vow, then the betrothal takes no effect.
2. If she has made a vow, but she went to the clergyman before the bridegroom was aware of it, and the clergyman absolved her from the vow, then she is betrothed (L. c. 74).
3. If a man betroths a woman on condition that she shall have no defects and afterward it is found that she has even one defect, like a bad breath, or a wart which is not visible, then she does not become betrothed (L. c.).
4. If it was not specified at the time of the betrothal about the defects and it is found that she has the same defects enumerated above, or it is found that she makes a vow which any husband is against, the betrothal is doubtful.
5. If a man makes a condition with the woman that

she shall have no defects and she has same, but she went to the doctor and recovers, she is not betrothed (L. c.).

6. If, however, the woman makes a condition with the man that he shall have no defects, and he has some and went to a doctor and recovers, the betrothal takes effect, because there is no shame for a man who had defects and recovered from it, but for a woman it is a shame if she had defects, even she recovered afterward.

#### CHAPTER XL.

1. If a man say to a woman, "You are betrothed to me with this coin after thirty days," and she receives the money and was satisfied, the betrothal takes effect after the thirty days is expired, even if the money was spent in the meantime (Kidushin 58).

2. It is permitted that either the man or the woman may retract from the betrothal within the thirty days. If she retracts she must return the betrothed money, if he retract it is two opinions if the betrothed money must be returned or not (L. c.).

3. If before the thirty days expires a second man betroths her at once with coin, then she is betrothed to the second, because until the thirty days elapsed she did not belong to the first one, and when the thirty days expired she is a married woman; therefore, the consideration of the first man cannot be valid, because a married woman cannot be betrothed. (She must return the betroth money to the first one.)

4. If the second man dies before the expiration of the thirty days, there are two judicial opinions as to whether the first betrothal takes effect or not (L. c.).

5. If a man say to a pregnant woman's husband, "If your wife bears a girl she shall be betrothed to me," and she bears a girl, this betrothal is not effective, because a man cannot bargain with something that does not exist in the world, but Mamemmidès holds that if the woman was so pregnant that her condition was clearly visible, the betrothal can take effect, but he must again betroth her when she becomes of age (Kidushin 70).

6. If a man says to a married woman, "Take this coin and you will be betrothed to me after your husband divorces you," or he says to a woman who is his wife's sister, "You are betrothed to me with the coin after my wife dies," the betrothal takes no effect, because he is unable to betroth her at once (L. c. 62).

## CHAPTER XLI.

1. One man can betroth several women at same time and one of them can act as agent to receive the betrothal for all with one coin, but it must not be less than one peruto (one cent U. S.) for each one (Kidushin 50).

2. If one man betroths two women at one time and one of them was one of those forbidden to him, for example, the two women were mother and daughter, or two sisters, neither one of them becomes betrothed to him (L. c.).



In the name of the Holy Authorities, I express thanks and appreciation to all those who have assisted me in spreading this edition over the world and all those whose names are mentioned here or not they all shall be blessed with long lives, health and wealth.

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Rabb Kadushin deserves encouragement and I am sure will receive it.

(Signed) A. PEREIRA MENDES,  
Rabbi of Congregation Scharis  
Israel.

More commendatory letters from Yale, Princeton, Harvard, Columbia, and Fordham Law Schools, and prominent lawyers, are in my possession. It is not necessary to print them all, as the sense of the law is the praise in itself.

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